NO. 9

SEE PAGE 2 & 3

REFORESTING
OCT. 29, 1959

STUMPAGE PRICES--Taholah and Crane Creek Contracts

Stumpage prices under the Taholah and Crane Creek contracts have been adjusted in accordance with log market prices as provided in these contracts. These adjustments result in increases in the rates for the principal species on both units. The rate for Spruce was reduced on the Crane Creek Unit and that for Pine dropped on both units. The net result was a gain in rates as the reduced rates were for species which are of minor importance in both units.

SPECIES	Stumpage Rates per M Bd.Ft. TAHOLAH UNIT 3rd Quarter 1959	TAHOLAH UNIT 4th Quarter 1959	CRANE CREEK 3rd Quarter 1959	CRANE CREEK 4th Quarter 1959
Western Redcedar	$14.23	$14.41	$15.71	$15.93
Sitka Spruce	14.95	15.03	15.23	14.65
Douglas Fir	31.87	32.01	32.03	32.73
Pacific Silver or Amabilis Fir	11.79	11.77	11.34	11.45
Western White Pine	14.03	13.78	11.80	11.65
Western Hemlock and Other Species	9.97	10.01	10.25	10.32

It will be noted that the stumpage price for spruce increased on the Taholah Unit by eight cents per thousand board feet while it dropped on the Crane Creek Unit by 58 cents per thousand. This is an unusual development which results from the fact that the adjustment of stumpage rates on the Taholah Unit is based on the combined Puget Sound and Grays Harbor Log Markets only while the adjustment of rates on the Crane Creek Unit is based on the combined Puget Sound, Grays Harbor, and Columbia River Log Markets. Spruce log prices were off on Columbia River markets during the past quarter. They were up only slightly on the other two. The net result was a drop in the stumpage rate for spruce on the Crane Creek Unit. This drop is largely compensated by the fact that Douglas fir prices increased by 70 cents on the Crane Creek Unit as compared to a 14 cent increase on the Taholah. This difference is also explained by the fact that the Columbia River Market is used in figuring price adjustments on the Crane Creek Unit. In this case, Douglas fir log prices increased more on Columbia River markets than they did on Puget Sound and Grays Harbor Markets.

MODIFICATION OF CRANE CREEK CONTRACT APPROVED

The modification of the Crane Creek Contract, mentioned in the last News Letter, was approved by the Commissioner of Indian Affairs on October 14, 1959. The principal provisions of this modification are to provide for salvage re-logging operations and to provide for an increase in the annual cut. Provision is also made for pre-logging where such operations appear to be desirable and in the interests of the allotment owners. Our Forestry staff is scheduled to meet with Rayonier officials early in November to make plans for salvage re-logging operations on the cut-over portions of the Crane Creek Unit.

The salvage provisions of the modification of contract do not apply on the 28 fee patent allotments which are under the original timber sale contract nor to seven allotments on which the owners revoked their Powers of Attorney before October 14, 1959. On all other allotments under the contract, the salvage provisions will apply. On these allotments, more nearly complete utilization of the timber will result with increased income to the allotment owners.

REFORESTING OF CUT-OVER LAND

Logging operations on the Quinault Reservation are planned wherever possible to provide for natural reforesting of the cut-over lands. Both Rayonier Incorporated and the Aloha Lumber Corporation are required to harvest the timber on their units by a system of alternate cutting blocks, leaving uncut timber between the clear-cut areas to provide for natural seeding. This method gives reasonable assurance that the cut-over land will be reforested but on some areas where heavy cedar slash remains on the ground after logging satisfactory results are not secured.

Salvage relogging operations that have been underway on the Taholah Unit for some time and which will soon be started on the Crane Creek Unit should improve the chances for natural reforestation on these cedar slash areas. The salvage operations remove much of the logging debris from the ground. Following salvage of the useable material, heavy accumulations remaining are burned or will be burned wherever possible. It is hoped that this will expose enough soil to permit air-borne seed from the bordering reserve stands to become established.

However, it is probable that all cut-over lands will not be completely reforested by natural means. Poor seed years, adverse weather conditions and other factors will undoubtedly delay the re seeding in some instances and permit brush to get started. In such cases, it would be desirable to plant in order to get reproduction established ahead of the brush.

Recently, a number of allotment owners have inquired as to the possibility of planting their cut-over lands. At least one is making definite plans to set aside a portion of his stumpage payments to cover the cost of such a program. We are happy to report that he can now secure financial assistance from the Federal Government to do the job.

Under the Agricultural Conservation Program of the Department of Agriculture it is now possible for an allotment owner to reforest his cut-over land either by planting or direct seeding and to have a substantial part of the costs paid by the Federal Government. Maximum costs that will be paid by the government under this program are as follows:

1. 70 percent of the cost of trees and planting not to exceed $30.00 per 1,000 trees planted. Cost-share is limited to the number of trees per acre recommended by the responsible technician not to exceed 1,000 trees per acre.

2. 70 percent of the cost of necessary site preparation including the removal of competing brush not to exceed $25.00 per acre.

3. 70 percent of the cost of direct seeding not to exceed $15.00 per a-

The Forestry staff at our Hoquiam Office is prepared to furnish technical advice and assistance to any allottee who wishes to take advantage of this program. Interested parties are encouraged to write to either the Everett or Hoquiam Office of the Western Washington Indian Agency, or to call in person.

BRANCH OF REALTY

When writing to the Agency on matters pertaining to a specific piece of land, the name of the Original Allottee, the Reservation, Allotment Number, and legal description of the land should be given, or as much of this information that the writer knows. In such instances that the writer clearly identifies the land, a prompt and accurate answer can be given to usual inquiries. In referring to land owned by married women, the maiden name should be shown, as information is recorded at the Agency by maiden name.

INCOME TAX ON FEE PATENTED ALLOTMENTS

Further information has been received regarding the payment of capital gains tax (Federal Income Tax) by persons who sell their allotments after acquiring Patents in Fee. The applicable portion of the letter is quoted in full for general information.

> "The Internal Revenue Agent's inquiry is fully answered by the case of Shepard v. United States (U.S. District Court for Eastern District of Wisconsin-1958). 162 F. Supp. 313. That case was an action by an Indian allottee and another against the United States for refund of income taxes paid on the sale of allotted land after the allottee had obtained a Fee Patent, on basis of difference between the sales price and the value of the land when allotted in trust, as adjusted by the Internal Revenue Code. The court held that, under the rationale of Squire v. Capoeman, 351 U.S. 1, 100 L. Ed. 883, lands transferred to an Indian allottee under the General Allotment Act after the period of trust carry as a basis for tax purposes the fair market value of the land at the Time of Transfer in Fee and NOT the Value at the Time of Allotment".

Based upon the above, it appears that the sellers of Fee Patented Allotments should be subject to capital gains tax only on the difference between the selling price and the value of the allotment at the time the Patent in Fee is issued.

BRANCH OF WELFARE AND EDUCATION

Many people have received letters in recent months, after they have sold land or timber, to inquire about their plans for use of the money. These questions are asked by our Agency Social Worker who tries in this way to encourage allottees or heirs to give serious consideration to the proper use of their money before it is gone. Some individuals have bought or improved homes, paid debts, and purchased necessary items and still had money left. Investments have been made in trust accounts with baks, purchases made of stocks or mutual funds which pay excellent interest, as well as purchase of defense bonds, and good insurance.

QUINAULT NEWS LETTER

NO. 7

SEE PAGES 455
FOREST MANAGEMENT
APRIL 27, 1959
REFORESTATION & OTHER

STUMPAGE PRICES - CRANE CREEK AND TAHOLAH SALES

Under the terms of the Crane Creek and Taholah Timber Contracts, stumpage rates are determined by applying established ratios to weighted average log prices as reported every three months by the Pacific Northwest Logger's Association. The established ratios may be changed, not more than once in any calendar year, if changes in circumstances affecting the sales justify such change. The contractors may request a change in the ratios if they feel that circumstances justify it or the Bureau may make changes without being requested to do so if studies reveal that a change is warranted.

Just prior to the close of 1958, both the Aloha Lumber Corporation and Rayonier, Incorporated requested a reduction in ratios. Stumpage revaluation studies completed in January of this year showed that circumstances affecting these sales had not changed enough to justify any change in existing ratios, either upward or downward. Consequently, the requests of the contractors were denied.

Further studies are now being made to determine if an upward adjustment of the ratios might be justified. There has been some improvement in market conditions. This improvement is reflected by some increase in stumpage rates in the two principal species on both units. Stumpage rates were adjusted as of April 1, 1959. The new rates which are now in effect are listed below, together with the rates that were in effect during the first quarter. The present rates will be in effect until July 1, 1959.

SPECIES	STUMPAGE RATES PER M BOARD FEET			
	TAHOLAH UNIT		CRANE CREEK UNIT	
	1st Quarter 1959	Present Rates	1st Quarter 1959	Present Rates
Western Redcedar	$14.11	$14.36	$15.11	$15.50
Sitka Spruce	14.67	14.65	15.22	13.71
Douglas Fir	30.04	30.43	31.00	30.35
Pacific Silver Fir	11.85	11.73	11.43	11.36
Western White Pine	13.35	11.65	10.99	10.68
Western hemlock and other species	9.81	9.86	9.88	9.95

SMALL SALES

Oral auction bids were received on March 24, 1959 for 10,680,000 board feet of timber on four allotments bordering the Olympic Highway near Queets. Morrison Logging Company's bid was high and contracts have been executed with this Company for [illegible] of the timber. Stumpage rates to be paid for the timber are as follows:

effect when the timber is cut or when the logs are scaled. In order that you may have a clear understanding of this question, we are quoting that part of Section 14 of the Crane Creek Contract that governs this situation.

> "PROVIDED FURTHER, that the stumpage rates governing at the time the timber is scaled shall be the rates charged for the timber actually cut".

In an operation the size of those on the Crane Creek and Taholah Units, it is necessary that large volumes be cut in advance of skidding operations. There may be as much as 2 million feet on one landing and the last log on a landing may be skidded as much as a year after it is cut. It is then scaled and paid for at the stumpage rate in effect on the day it is scaled. This has usually been to the advantage of the timber owners as the general trend of stumpage prices has been upward.

FOREST MANAGEMENT - QUINAULT

The Western Washington Agency receives many letters from allotment owners in the Crane Creek and Taholah Units wanting to know when their timber will be logged. Others want to know why their timber is still uncut when the timber on the next allotment has been logged or why part of their timber is cut and the rest left. In order to give each of you a better understanding of the situation, a brief statement of policy and an explanation of how this policy is applied to the management of the forest on the Crane Creek and Taholah Units appears to be in order.

The Secretary of the Interior is charged by law to manage Indian forest lands for the sustained production of forest crops. Numerous methods of cutting have been tried in west coast timber stands to determine the best method of harvesting the timber to provide for the establishment of a new crop of trees to replace the ones removed. Experience has shown that the best cutting system in the Douglas fir region in Western Washington is that of clear-cutting of alternate blocks. This system requires that reserve stands be left between the clear-cut blocks to serve as seed sources and to act as fire breaks until the cut-over areas have re-seeded and until the slash has become rotted and covered with young growth. This usually requires from eight to ten years depending on the site, the occurrence of good seed years, climatic conditions and other factors.

After the cut-over blocks have re-seeded and the fire hazard resulting from the raw slash on these blocks has abated sufficiently, a second cycle of cutting operations will be made to remove about half of the reserve stands. A third and final cycle will follow to complete logging on the units.

Location of the cutting blocks during each of the three cycles of cutting depends on a number of things. The condition of the timber, the topography of the ground, species composition and other factors are involved. An effort is made to locate cutting boundaries in such a way as to minimize blow down in the edges of the reserve stands. It is usually not feasible to use allotment lines as cutting boundaries.

Throughout the Crane Creek and Taholah Units are occasional areas that were blown down in 1921. Most of these areas are now covered with young stands of timber about 35 years old. These areas will naturally be reserved until the second or third cutting cycle as they are growing rapidly and will add substantial volume during the next ten to twenty years.

Logging by alternate clear-cut blocks is the system used by all principal forest management agencies throughout the Douglas fir region, including the U. S. Forest Service, the Washington State Department of Natural Resources and most private timber companies. This system has proven to be the best possible way to secure a new crop of trees by natural seeding and has also been found to be the most effective way of minimizing the fire hazard that must inevitably result from logging operations. The reserve blocks of green timber will normally stop the spread of fire if one should start in one of the slash areas. Even when fire danger is extreme, the green standing timber will slow down the spread of a fire and give the fire fighters a chance to bring it under control.

It is hoped that this letter will explain logging operations on the Crane Creek and Taholah Units. The Bureau of Indian Affairs is committed to a policy of good forest management. Clear cutting by alternate blocks is the best known management for the Quinault Reservation forest lands.

REALTY DIVISION

TRUST PERIODS NOT ENDED

This Agency has received reports that there is currently being circulated an unfounded rumor that trust periods may be ending. Congress has taken steps to extend all trust patents which would automatically expire during a current calendar year, by extending the trusts for additional periods. All owners of trust and restricted property may be assured that in no event will the trust periods expire without due notice to the property owners.

TRIBAL RIGHTS AND FEE PATENTS

Several recent visitors to the Agency Office have expressed concern over the possibility of losing tribal rights because they have acquired patents in fee, or have sold various allotments or interests owned by them. The question is generally stated as "Do Fee Patent Indians lose their tribal rights"? The answer is definitely, "NO".

Sometimes the Agency receives calls urging greater speed in acquiring patents in fee for applicants. Each applicant is expected to furnish the names and addresses of business or professional people who are in a position to make a statement verifying the applicant's ability to manage his property by himself to good personal advantage. As can readily be understood, this process is necessary to protect the interests of trust landowners, and to give the reviewing authority assistance in making a determination. Many delays commence at this point. The persons or firms given as references often fail to respond or are not sufficiently acquainted with the applicant in order to make a definite statement.

3/28

To: Dr. Steen,

For your information.

D. M. Marshall

IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Western Washington Agency
3006 Colby Avenue, Federal Building
Everett, Washington 98201

QUINAULT NEWSLETTER NO. 84

STUMPAGE RATE REVISION:

Under delegation of authority from the Commissioner of Indian Affairs, the Area Director revises stumpage rates to be effective February 1, 1977 as provided by the Crane Creek and Taholah Logging Unit Contracts, No. I-101-IND-1902 and No. I-101-IND-1766 respectively. The new rates are as follows:

Crane Creek Unit:	Stumpage Rate
Western White Pine	$ 95.10
Amabilis Fir	182.34
Western Redcedar	203.84
Sitka Spruce	252.18
Douglas-fir	171.97
Western Hemlock and other Species	145.24

Taholah Unit	Log Grade	Log Grade Stumpage Rate
Western White Pine	Peeler	$209.62
	Special Mill	136.13
	No. 1	145.13
	No. 2	73.32
	No. 3	39.43
Amabilis Fir	Peeler	$287.06
	Special Mill	207.03
	No. 1	228.24
	No. 2	167.13
	No. 3	128.13

Western Redcedar	No. 1	$309.11
	No. 2	214.16
	No. 3	110.55
Sitka Spruce	Select	$490.53
	Special Mill	295.65
	No. 1	412.40
	No. 2	153.73
	No. 3	108.26
Douglas-Fir	Peeler No. 1	$340.05
	Peeler No. 2	233.84
	Peeler No. 3	209.26
	Special Mill	172.62
	Sawmill No. 1	168.31
	Sawmill No. 2	125.17
	Sawmill No. 3	86.76
Western Hemlock & Other Species	Peeler	$258.45
	Special Mill	206.30
	No. 1	207.32
	No. 2	144.91
	No. 3	102.92

Stumpage rates for cull material removed with the sawlog operation and the stumpage rates for material removed under the modification of these contracts have also been reviewed. The rates to be effective February 1, 1977, are:

	Taholah	Crane Creek
Cull Material (No. 4 logs and cull for defect)	$7/MBF gross scale	$10/MBF
Shingle Bolts and other cedar cordwood	$15 per cord	$15 per cord
Pulpwood	$2 per cord	$2 per cord
Cedar Shakeboards	$120 per M boards	$120 per M boards

Stumpage consultations were held on February 17, 1977. The Quinault Tribe expressed their objection to our proposed shakeboard rate and requested we consider the additional Tribal cost involved to administer these salvage contracts. Stumpage rates were adjusted after consideration of these costs.

In addition, Aloha expressed their objection to the proposed cull log stumpage rate. A review and subsequent reduction in cull log stumpage rate resulted from this objection.

Volume and Value of Forest Products Sold in Calendar Year 1976:

A. Timber Sales	Volume, Bd. Ft.	Value
Crane Creek Logging Unit	67,890,000	$7,871,421
Taholah Logging Unit	78,455,000	8,453,243
Yashake Obi Logging Unit	5,739,000	955,133
TOTAL	152,084,000	$17,279,797

B. Permits

(1) Special Allotment:

30 Special Allotment Timber Cutting Permits were issued for calendar year 1976, having an estimated volume of 46,078,000 board feet, and an estimated value of $5,095,864.

(2) Free Use:

71 Free Use Cutting Permits were issued during the year, all on allotted land. Products cut were mostly cedar shakeblocks with an estimated volume of 4,877,000 board feet and an estimated value of $150,285.

Reforestation:

During calendar year 1976, 1,013 acres were planted by the Quinault Tribal Reforestation Crews and 80 acres by private contractor for a total of 1,093 acres. Also 102 acres were treated for Dwarf Mistletoe.

Check Scaling:

A total of five and a half million board feet of timber was check scaled on the Quinault Reservation during the year. Grays Harbor Scaling Bureau showed a difference of +0.58%, Puget Sound +0.29%, which indicates an acceptable job.

Special Salvage Project:

A portion of the Taholah Unit is currently being relogged under a project called "Special Salvage." This project, approved by the Commissioner of Indian Affairs, includes approximately 900 acres of land which has already been logged and salvaged.

The project designed to remove chunks and pieces of logs which are of low quality, to make planting easier, reduce fire hazard, and provide some income to allottees for this waste material left on the ground. A special salvage price of $2/cord was approved for this project. This will allow more wood fiber to be removed with cable logging equipment than would be removed under conventional salvage methods at higher stumpage rates. We are currently reviewing a Tribal proposal to expand the Special Salvage area on the Taholah Unit. This review will involve extensive field examination of proposed areas for the slash volume and composition plus a survey of the reproduction existing on the area.

Forest Management Use Fees:

During Fiscal Year 1976 a total of $212,839.00 of the total Administrative fee collected was authorized by allottees to be withheld in a Special Use Fee Account to be used on the Quinault Reservation in the Forest Management Program. The total Administrative Fee collected was $1,285,736.00. The U.S. Treasury collected the difference of $1,072,897.00 which was placed in the U.S. General Fund.

Superintendent

March 14, 1977

PLEASE KEEP THIS OFFICE INFORMED OF ANY CHANGE IN YOUR ADDRESS. THANK YOU.

ATTY DAVE MARSHALL
LAND & NATURAL RES. DIVISION
DEPT. OF JUSTICE
WASHINGTON, D.C. 20530

WESTERN WASHINGTON INDIAN AGENCY
Federal Building, 3006 Colby Avenue
Everett, Washington 98201

Postage and Fees Paid
Department of the Interior

U.S.MAIL

QUINAULT ALLOTTEES ASSOCIATION

NEWSLETTER

DECEMBER 1975

Dan Marchael

THE ALLOTTEES COMMITTEE AND THE CLAIMS CASES

Since the last annual meeting the Allottees Committee and the attorneys have been making decisions about the Claims Cases and other legal action that the allottees may need.

We have met three times with the attorneys. We think that these meetings have been very good and that all is going well for you on the Claims Cases. They recommended that we hire four new experts. These experts have been hired.

We are working on all phases of the Claims Cases. These cases will go to Court a part at a time. There are too many claims to be able to do it all at once.

The documents, or exhibits, which we will use for all of the Claims Cases will be turned over to the government by February 1976. The government will turn over their exhibits to us at the same time. The attorneys will be trying to get a Court date set for the first part of the Claims. We hope to be able to get a date set for sometime next summer.

OTHER COMMITTEE WORK

Whenever the Bureau of Indian Affairs has a meeting to talk about your lands and timber, we are there. We want to know what is going on so that we can tell you about any important changes. We have made quite a few suggestions to the Bureau so that you will get better services from them.

We have had special meetings with the Bureau to talk about giving every allottee the right to put fee owned land back into trust if they want to. The Bureau won't do this at the present time. Although these meetings have been helpful, the problem is still there.

THE EXPERTS

These are the experts working on the Claims Cases.

The Forestry Experts. They are Dr. William Pierce, Wes Rickard, Dee Terry and Pete Vaughn. Since the beginning of the lawsuit Dee Terry has been getting information on how the Bureau has mismanaged your timber. Pete Vaughn works with him. These two experts and their crews have been doing all of the field work.

The foresters keep all of this information up-to-date because the allottees are still losing money on their timber. Dr. Pierce works on this and coordinates the work of the forestry experts. Each expert does work in the area he is trained for and will give a report to the Court.

There are 50,000 or more papers which will be used as exhibits in the Claims Cases. These are the papers which will be turned over to the government sometime next month. Most of these are being prepared by Dee Terry, Pete Vaughn and one of our attorneys, Jerry Goldstein.

The Roads Expert. We hired Doyle Burke as our roads expert last May. He works on the Easment Claim. His first report has already been sent to the attorneys.

The Sawmill Experts. We hired Mater Engineering in September 1973 They are working on their report now. It will give the Court an idea of how much the forests would have been worth to the allottees if there had been a sawmill owned by all of us. Their testimony will help our Sawmill Claim.

The Fisheries Expert. James Hall is working on the Fisheries Claim. This is a claim for fisheries damages as a result of poor logging and poor road construction. He still has some field work left to do before he makes his final report.

The Accounting Expert. We hired an accounting firm, Berman, Goldman & Ribakow, to investigate our Accounting Claim. This is one of the claims that will go before the Court at a later time.

The Other Experts. The Court knows nothing about the allottees. We have to tell them. We have hired Dr. Verne Ray, Dr. Barbara Lane and Janet Terry to do this. These experts work together and each will give their testimony to the Court. Dr. Ray and Janet Terry have been working on this part-time for several years but we needed more information about the allottees. To get this, we hired Barbara Lane and Westat, Inc. last summer.

Barbara Lane is an anthropologist. She is an expert on Indian rights, hunting and fishing rights, treaty rights and land claims. In order to gather more information on the allottees, she and several other people are interviewing people. Westat, Inc. selected the names of the persons to be interviewed.

THE INTERVIEWS

Barbara Lane asked Susan Horton, Sue Pittis, Rob Walsch, Ken Hansen and Robert Lane to help her talk to the allottees. They have been working now for several months and are almost through with the job. Barbara and the other interviewers have enjoyed meeting the allottees and having had the chance to talk to them.

If you were interviewed, we all wish to thank you for the help you have given. The things that you told the interviewers will help Dr. Lane tell the Court more about the allottees.

ROAD USE FEES

We have asked the Bureau of Indian Affairs to tell you how much money you should charge loggers to use the roads on your allotments. In the past they have left it up to you. Too many of us don't know how much we should charge. We asked the Bureau to send you this information when someone asks for a permit to use your roads.

SPECIAL ALLOTMENT TIMBER CUTTING PERMITS

If you have timber outside of the Taholah or Crane Creek Units, you might have it logged under one of these permits.

On a single-owner allotment the owner can apply for a Cutting Permit which will allow the owner to make a contract with any logger.

On a multiple-owner allotment all of the owners must agree to have one of them get the permit. When that person is chosen, all of the other owners have to give him or her their power-of-attorney. That person is then free to deal with any logger.

We don't want you to have problems when you use these permits. We have asked the Bureau to give you more help so that you will get a good contract, will get a good logging job done and will be able to collect your money.

HAVE YOU SIGNED UP?

Seven new people have signed up to become plaintiffs in the lawsuit. There are over 1400 allottees signed up now. We want to find allottees or their descendants who have sold their reservation lands.

Look at these names. If your name is here, or you an heir of one of these persons, please be sure you have signed up. If you know any of these people, or their descendants, please let them know about the Claims. If you want to you can send us their names and addresses and we will write to them.

Albin Anderson, Jr.
Calvin Armstrong
David Armstrong
Austin Aronson
John Aronson
Kenneth Aronson
Edward Becken
Susie Beckwith
Janet Begg
Melinda D. Benn
Phillip Benn
George Bertrand
David Black
Ruth Black
Vernetta Barron
Nathan Blakeslee
Alice Boldt
August Boldt
Judith Boldt
Charles Bouton
Betsy Bright
Josie Bright
Robert Bush
Edith Butler
Lawrence Butler
Myrtle Lois Butler
Wanda Calhoun
Byron Cambell, Jr.
Lydia Carlson
Shirley Jean Carr
Frances Castens
Gladys Chandler
Frances Charles
Vivian Charles
Robert Choke
Daniel F. Clancy
Percy Colbert
Rose Wood Costello
Bertha Davis
Doris M. Davis
Ethel Davis Bizer
Ralph B. Davis
Ruby Davis
Russell Charles Davis
Wilbur Ronald Davis
Lottie Green Edmiston
Helen Elliot Eliassen
Celeste E. Elliott
Edmund Church Elliott
Jonathan Elliott
William Elliott
Fannie Boldt Ero
Guy Fisher
Robert Fisher
Lorraine Frank
Raleigh Frank
Christine Clark Fullerton
Verna M. Gasseway
Harold Spencer George, Jr.
Ione George
Lucy Ann George
Cora Gracey
Della Gracey
Florence Gracey
Joseph V. Gracey
Albert Lincoln Green
Patricia A. Green
Beatrice R. Hash
Arthur Heath
Robert R. Heath
Edward Hudson
Edward R. John
Richard B. Johns
Elmer Johnson, Jr.
Iver Johnson, Jr.
Issac Jones
James Klatush
Bernard Kofoed

Quinault Documents.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, RAYMOND H. BITNEY, Superintendent of Taholah Indian Agency, and JAMES A. HOWARTH, JR., United States Forest Supervisor, Appellants,	)	
vs.	)	No. 9558
	)	Mar. 10, 1941
HARVEY EASTMAN, CHARLES STROM, OSCAR McLEOD, ALFRED EDWARD BECKEN, LAYTON HENRY WILLIAMS, JAMES JACKSON, et al., Appellees.	)	

Upon Appeal from the District Court of the United States for the Western District of Washington, Southern Division.

Before: WILBUR, GARRECHT and HEALY, Circuit Judges
HEALY, Circuit Judge.

This case involves the power of the Secretary of the Interior, under the act of June 25, 1910, 36 Stat. 855,1/ to condition his assent to the sale of timber on trust-allotted lands in the Quinaielt Indian reservation.

1/ Sections 7 and 8 of that act, 25 USCA §§ 406, 407, read as follows:

"§ 7 - Sale of Timber on Unallotted Lands.

The mature living and dead and down timber on unallotted lands of any Indian reservation may be sold under regulations to be prescribed by the Secretary of the Interior, and the proceeds from such sales shall be used for the benefit of the Indians of the reservation in such manner as he may direct: Provided, That this section shall not apply to the States of Minnesota and Wisconsin.

§ 8 - Sale of Timber on Allotments Held Under Trust.

The timber on any Indian allotment held under a trust or other patent containing restrictions on alienations, may be sold by the allottee with the consent of the Secretary of the Interior and the proceeds thereof shall be paid to the allottee or disposed of for his benefit under regulations to be prescribed by the Secretary of the Interior."

The suit was brought by six of the Indian Allottees on behalf of themselves and all other allottees similarly situated. The plaintiffs sought a declaration that the Indians have authority without restriction or charge to dispose of the timber on their allotments and that regulations of the Secretary of the Interior relating to sales of timber on Indian lands are without legal force. They prayed an injunction restraining interference with the Indians in the sale and logging of the timber according to their own wants. The United States moved to dismiss on the ground that it had not consented to be sued, and with other defendants moved for a dismissal for want of equity in the bill and on the ground that the Secretary of the Interior is a necessary party and he had not been joined. The court denied the motions. Ultimately it held with the complainants and ordered judgment accordingly. 2/

The Quinaielt reservation comprises about 200,000 acres of land principally valuable for its timber, less than two percent of the area being susceptible to agricultural uses. At the present time the commercial timber uncut totals about 2½ billion feet. Four general or unit contracts for the sale of timber from the reservation are outstanding, two of which were approved in 1923, one in 1928 and one in 1937. In many instances trust allotments were made after the execution of these contracts and the allottees took subject to them. In other instances such is not the case, no contracts having been executed prior to allotment. Thus there are numerous individual contracts, made by the agency superintendent on behalf of allottees under power of attorney. In the view we take this difference in circumstances is immaterial and the fact that many Indians took subject to outstanding contracts, while stressed by appellants, will not be further noticed.

Regulations promulgated by the Department of the Interior under date of April 10, 1920, were expressly made a part of each contract. These regulations, denominated

---

2/ The opinions of the court are officially reported in 28 Fed. Supp. 807, and 31 Fed. Supp. 754.

General Timber Sale Regulations, were issued by the forestry branch of the Indian Service. Chiefly under attack are regulation 10, 3/ providing for selective logging, and regulation 50 providing for the setting aside of not more than 10% of the proceeds of sale to cover the expense of advertising, marking, scaling, protection of timber, and supervision of the sale. While these regulations were generally applicable to all Indian timber lands, and, as has been said, were embodied in the existing sale contracts, the provision for selective logging had not been enforced in the area in question prior to 1936 for the reason that no equipment had previously been devised which could selectively log such territory as the Quinaielt reservation. The coming into use at that time of the caterpillar logging tractor and large logging transportation trucks made selective logging possible on the reservation.

It may be observed at this point that in 1936 the Department issued new general forestry regulations which, among other things, made more specific the existing requirement for selective logging. More of these later. From 1936 forward it appears that the selective logging principle was enforced on the reservation with the result that approximately 30% of the volume of the timber has been reserved

---

3/ "Selective logging, or the logging of areas in such manner as to preserve a part of the merchantable timber, promote the growth of young trees, or preserve the forest cover, will be practiced on all lands chiefly suitable for the production of timber crops. Live trees of diameters below those named in the contract may be designated for cutting, and larger trees may be reserved from cutting in the discretion of the officer in charge. If live trees which are not designated for cutting are cut, or are seriously injured through lack of care, they will be double scaled and so charged and paid for. In the discretion of the officer in charge, a strip not exceeding three hundred (300) feet in width on each side of streams, roads, and trails and in the vicinity of camping places and recreation grounds may be reserved, in which little or no cutting will be allowed."

from cutting. The value of the timber conserved, however, is said to be considerably less than 30%, as the trees left standing are smaller and less merchantable. The "clear cutting" of large areas, which is the practice particularly insisted upon by appellees as being at least in their immediate interest, is no longer permitted. This fact, plus the withholding of a percentage of the sale proceeds under regulation 50, is the moving cause of the present litigation.

The trial court thought that leave to sue the United States is found in the act of August 15, 1894, as amended, 25 USCA § 345. 4/ We are not able to agree. It is plain from the whole statute that Congress intended merely to authorize suits to compel the making of allotments in the first instance. Here the allotments have already been made. Should the view taken below be approved and the scope of the statute thus enlarged by judicial construction the government may find itself plagued with suits of Indians dissatisfied with the administration of their individual holdings. Enlargement of the right to sue the government for the redress of grievances of this character is solely a function of Congress. The suit as against the United States should have been dismissed.

4/ "§ 345. Actions for allotments. All persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of land under any law of Congress, or who claim to be so entitled to land under any allotment Act or under any grant made by Congress, or who claim to have been unlawfully denied or excluded from any allotment or any parcel of land to which they claim to be lawfully entitled by virtue of any Act of Congress, may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper district court of the United States; and said district courts are given jurisdiction to try and determine any action, suit, or proceeding arising within their respective jurisdictions involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty (and in said suit the parties thereto shall be the claimant as plaintiff and the United States as party defendant); and the judgment or decree of any such court in favor of any claimant to any allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him . . . "

While the court below rested its decision on its interpretation of the act of June 25, 1910, appellees take the position here, postulated on the treaty of July 1, 1855, 12 Stats. 971, that the lands of the Quinaielt Indians are not subject to restrictions upon alienation. Article VI of the Quinaielt treaty, however, authorizes the President in his discretion to assign lots to individuals or families "on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as it may be applicable." The same numbered article in the treaty with the Omahas authorizes the President, in his discretion, to issue patents to persons or families conditioned that the tracts assigned shall not be aliened. 10 Stat. 1043, 1044. That article further provided that the restraint on alienation might be removed only with the consent of Congress. 5/

The trust patents for the allotments were issued in conformity with the General Allotment Act of February 8, 1887, 24 Stats. 388, 25 USCA § 331. They contain the usual provision that the United States will hold the land allotted, subject to all statutory provisions and restrictions, for 25 years in trust for the sole use and benefit of the Indians. Since the lands are chiefly valuable for their timber it is settled law that the restraint upon alienation, effected by the terms of the trust patents, extends to the timber as well as to the land. Starr v. Campbell, 208 U.S. 527.

Prior to the act of June 25, 1910, there was no general authority to sell the timber on Indian lands. 6/ By § 7 of that act the sale of timber on unallotted lands was authorized under regulations to be prescribed by the Secretary of the Interior. By § 8 the timber on any Indian allotment held in trust might be sold by the allottee with the consent of the Secretary. We think it is without significance that § 7 authorizes regulations governing the sale whereas § 8 speaks of consent. The power to condition

---

5/ The treaty with the Nisqually Indians, 10 Stats. 1132, contains similar reference to the Omaha treaty. It was held in Eells v. Ross, 64 Fed. 417, CCA 9, that allotments made pursuant to the Nisqually treaty are restricted against alienation. Similarly in respect of the Yakima treaty, 12 Stats. 951. See United States v. Sutton, 215 U.S. 291.

6/ See letter of the Secretary of the Interior of January 15, 1910, made a part of Report No. 1135, 61st Congress, 2nd Session, 1910.

the consent or to prescribe the terms upon which it will be given is rather obviously implied. It is important to remember that Congress was legislating in respect of the disposition of property of persons in tutelage - allottees presumptively incompetent to manage their own affairs. Congress made no attempt to prescribe the conditions under which the Secretary would be obliged to consent to a sale. Those matters it tacitly left to the judgment and discretion of the responsible officer. Plainly, the statute placed the Secretary in a situation where he must perforce state the terms under which sales would be approved. That the Secretary so believed is evidenced by the administrative practice followed throughout the period of thirty years since the passage of the act. Departmental regulations and instructions governing in detail the sale of timber on allotted as well as unallotted lands have been in force virtually from the inception of the statute.

The trial court thought that the statutory power of the Secretary was limited to the veto of a sale "improvident from the standpoint of price." But equally important is the exaction of guarantees that the price agreed upon will be paid. Essential also to a provident sale of live timber are provisions for the protection of young growth in the process of logging, stipulations relating to the permissible heighth of stumps, to the disposition of slashings in such way as to mitigate the fire hazard, and many others. Details of this sort are prescribed at length in the fifty-odd regulations made a part of the present contracts. It is obviously impossible for the Secretary to confer with each allottee concerning the terms and conditions of a proposed contract. He must of necessity promulgate general rules. Whatever they may be called, the rules are in effect a statement of the terms under which sales by allottees will be approved. If authority were needed to support the views here expressed it is to be found in many cases. United States v. Thurston Co., Neb., 143 Fed. 287; National Bank of Commerce v. Anderson, 147 Fed. 87, 90; Mott v. United States, 283 U.S. 747, 751; Sunderland v. United States, 266 U.S. 226, 235; United States v. Brown, 8 Fed. (2nd) 564, 567; United States v. Goldfeder, 112 Fed. (2nd) 615; Starr v. Campbell, supra. See also generally, United States v. Algoma Lumber Co., 305 U.S. 415.

As has been said, the general forest regulations adopted in 1936 particularized on the broad principles enunciated in regulation 10. Thus they provided that "whenever

practicable, from 25 to 60 per cent of the merchantable timber volume will be left standing in order to protect the site, provide seed for a new stand, and make possible a second cut before reproduction matures." Further, in the making of timber sales "consideration should be given to whether it will be beneficial to the Indians to have a specific area logged or reserved for recreational and scenic purposes." Depending somewhat on the spirit in which they are administered, these provisions would seem to be within the general terms of the 1920 regulation. The area of prohibited cutting along the line of highways was reduced by the later regulations to 200 feet, instead of 300 as in regulation 10, and the permissible fee deductible to cover the expense of supervision was reduced to 8% or even less in appropriate circumstances.

The trial judge was "impressed" with the wisdom of the selective logging principle as explained by the experts of the Indian forestry service. "It may", he said, "result in immediate detriment to the allottees. Ultimately, however, it will result in benefit to the group as a whole." But the judge appeared to be of the belief that the immediate advantage of the Indians was paramount. Clearly, however, the Department was free to take the long view. The plaintiffs themselves are but descendants of the generation which negotiated the treaty. The Secretary was not obliged to formulate a policy which would make it possible for the Indian of today to consume or lay waste his heritage without thought of his own future or the welfare of those who come after him. In any event the court is not at liberty to substitute its judgment for that of the Secretary.

The deductions prescribed by regulation 50 as changed in 1936 are specifically authorized by the act of Congress of February 14, 1920, 41 Stats. 415. That act provides, among other things, that on the sale of timber on Indian allotments the Secretary of the Interior is authorized to charge a reasonable fee incident to the sale of the timber or in the administration of Indian forests, the fee to be paid from the proceeds of sales and to be covered into the Treasury as miscellaneous receipts. Appellees assert that their property is immune from charges of this sort by virtue of the 1855 treaty, but we find nothing in the treaty which could be thought to limit the power of Congress in this respect.

We need not determine whether the Secretary of the Interior is an indispensable party. We assume for the purpose of the decision that the action may be maintained against his subordinates.

Reversed.

(Endorsed) Opinion. Filed Mar. 10, 1941. Paul P. O'Brien, Clerk.

STANDARD FORM 33, NOV. 1969
GENERAL SERVICES ADMINISTRATION
FED. PROC. REG. (41 CFR) 1-16.101

SOLICITATION, OFFER, AND AWARD

3. CERTIFIED FOR NATIONAL DEFENSE UNDER BDSA REG. 2 AND/OR DMS REG. 1
RATING:

4. PAGE 1 OF 19

1. CONTRACT (*Proc. Inst. Ident.*) NO: J-42454

2. SOLICITATION NO:

☐ ADVERTISED (*IFB*) ☒ NEGOTIATED (*RFP*)

5. DATE ISSUED:

6. REQUISITION/PURCHASE REQUEST NO.:

7. ISSUED BY: CODE:

Land and Natural Resources Division
Department of Justice
Washington, D. C. 20530

8. ADDRESS OFFER TO (*If other than Block 7*)

SOLICITATION

9. Sealed offers in original and _____ copies for furnishing the supplies or services described in the Schedule will be received at the place specified in block 8, OR IF HAND-CARRIED, IN THE DEPOSITARY LOCATED IN _____ until _____ (*Time, Zone, and Date*). If this is an advertised solicitation, offers will be publicly opened at that time. CAUTION—LATE OFFERS. See par. 8 of Solicitation Instructions and Conditions.

All offers are subject to the following:
1. The attached Solicitation Instructions and Conditions, SF 33-A.
2. The General Provisions, SF 32 11/69 edition, which is attached or incorporated herein by reference.
3. The Schedule included below and/or attached hereto.
4. Such other provisions, representations, certifications, and specifications as are attached or incorporated herein by reference. (Attachments are listed in the Schedule.)

FOR INFORMATION CALL (*Name and Telephone No.*) (*No collect calls*):

SCHEDULE

10. ITEM NO.	11. SUPPLIES/SERVICES	12. QUANTITY	13. UNIT	14. UNIT PRICE	15. AMOUNT
	Preparing and furnishing 10 copies of a report, the scope of which is set out herein; 3 copies of documentation, identified and numbered as defendant's exhibits, in support of the report; and digest of defendant's exhibits, the digest to be in triplicate, for probative use in Helen Mitchell, et al. v. United States, Docket Nos. 772-71 through 775-71, before the Court of Claims (D.J. File Nos. 90-2-20-926, 90-2-20-923, 90-2-20-924, and 90-2-20-925).				

OFFER (*NOTE: Reverse Must Also Be Fully Completed By Offeror*)

In compliance with the above, the undersigned offers and agrees, if this offer is accepted within _____ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered, at the price set opposite each item, delivered at the designated point(s), within the time specified in the Schedule.

16. DISCOUNT FOR PROMPT PAYMENT (*See Par. 9 on SF 33-A*)
_____ % 10 CALENDAR DAYS; _____ % 20 CALENDAR DAYS; _____ % 30 CALENDAR DAYS; _____ % _____ CALENDAR DAYS

17. OFFEROR NAME & ADDRESS (*Street, city, county, state, & ZIP Code*) CODE: FACILITY CODE:

Forest History Society, Inc.
P. O. Box 1581
Santa Cruz, California 95061
Area Code and Telephone No.: (408) 426-3770

☐ *Check If Remittance Address Is Different From Above—Enter Such Address In Schedule.*

18. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (*Type or Print*)
Mr. Elwood R. Maunder
Executive Director

19. SIGNATURE: Elwood R. Maunder

20. OFFER DATE: January 28, 1971

AWARD (*To Be Completed By Government*)

21. ACCEPTED AS TO ITEMS NUMBERED:

22. AMOUNT: $25,683.

23. ACCOUNTING AND APPROPRIATION DATA
General Legal Activities 15-08 DC #1145
Land and Natural Resources Division

24. SUBMIT INVOICES (*4 copies unless otherwise specified*) TO ADDRESS SHOWN IN BLOCK 7

25. NEGOTIATED PURSUANT TO ☐ 10 U.S.C. 2304(a)( ) ☒ 41 U.S.C. 252(c)(4)

26. ADMINISTERED BY (*If other than block 7*) CODE:

27. PAYMENT WILL BE MADE BY CODE:
Department of Justice
Accounting Section
Washington, D. C. 20530

28. NAME OF CONTRACTING OFFICER (*Type or Print*)
Mr. Albert A. Cutino

29. UNITED STATES OF AMERICA
BY _____ (*Signature of Contracting Officer*)

30. AWARD DATE:

33-128 *Award will be made on this form, or on Standard Form 26, or by other official written notice.*

REPRESENTATIONS, CERTIFICATIONS, AND ACKNOWLEDGMENTS

The Offeror represents and certifies as part of his offer that: *(Check or complete all applicable boxes or blocks.)*

1. SMALL BUSINESS *(See par. 14 on SF 33–A.)*
He ☐ is, ☒ is not, a small business concern. If offeror is a small business concern and is not the manufacturer of the supplies offered, he also represents that all supplies to be furnished hereunder ☐ will, ☐ will not, be manufactured or produced by a small business concern in the United States, its possessions, or Puerto Rico.

2. REGULAR DEALER—MANUFACTURER *(Applicable only to supply contracts exceeding $10,000.)*
He is a ☐ regular dealer in, ☐ manufacturer of, the supplies offered. SEE ITEM 4

3. CONTINGENT FEE *(See par. 15 on SF 33–A.)*
(a) He ☐ has, ☒ has not, employed or retained any company or person *(other than a full-time, bona fide employee working solely for the offeror)* to solicit or secure this contract, and (b) he ☐ has, ☒ has not, paid or agreed to pay any company or person *(other than a full-time bona fide employee working solely for the offeror)* any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of this contract; and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer. *(For interpretation of the representation, including the term "bona fide employee," see Code of Federal Regulations, Title 41, Subpart 1–1.5.)*

4. TYPE OF BUSINESS ORGANIZATION
He operates as ☐ an individual, ☐ a partnership, ☒ a nonprofit organization, ☒ a corporation, incorporated under the laws of the ~~State~~ States of Minnesota and California

5. AFFILIATION AND IDENTIFYING DATA *(Applicable only to advertised solicitations.)*
Each offeror shall complete (a) and (b) if applicable, and (c) below:
(a) He ☐ is, ☒ is not, owned or controlled by a parent company. *(See par. 16 on SF 33–A.)*
(b) If the offeror is owned or controlled by a parent company, he shall enter in the blocks below the name and main office address of the parent company:

Name of Parent company and main office address _____

(include ZIP Code) _____

(c) Employer's identification number *(See par. 17 on SF 33–A.)* _____ *(Offeror's E.I. No.)* _____ *(Parent Company's E.I. No.)*

6. EQUAL OPPORTUNITY
He ☒ has, ☐ has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause herein or the clause originally contained in section 301 of Executive Order No. 10925, or the clause contained in section 201 of Executive Order No. 11114; that he ☒ has, ☐ has not, filed all required compliance reports; and that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained prior to subcontract awards. *(The above representation need not be submitted in connection with contracts or subcontracts which are exempt from the clause.)*

7. BUY AMERICAN CERTIFICATE
The offeror hereby certifies that each end product, except the end products listed below, is a domestic source end product (as defined in the *clause* entitled "Buy American Act"); and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

EXCLUDED END PRODUCTS	COUNTRY OF ORIGIN

8. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION *(See par. 18 on SF 33–A.)*
(a) By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:
(1) The prices in this offer have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor;
(2) Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening in the case of an advertised procurement or prior to award in the case of a negotiated procurement, directly or indirectly to any other offeror or to any competitor; and
(3) No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.
(b) Each person signing this offer certifies that:
(1) He is the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein and that he has not participated, and will not participate, in any action contrary to (a) (1) through (a) (3) above; or
(2) (i) He is not the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein but that he has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a) (1) through (a) (3) above, and as their agent does hereby so certify; and (ii) he has not participated, and will not participate, in any action contrary to (a) (1) through (a) (3) above.

9. CERTIFICATION OF NONSEGREGATED FACILITIES
(Applicable to (1) contracts, (2) subcontracts, and (3) agreements with applicants who are themselves performing federally assisted construction contracts, exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause.)
By the submission of this bid, the bidder, offeror, applicant, or subcontractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The bidder, offeror, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin, because of habit, local custom, or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause; that he will retain such certifications in his files; and that he will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):
Notice to prospective subcontractors of requirement for certifications of nonsegregated facilities.
A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). *NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.*

ACKNOWLEDGMENT OF AMENDMENTS	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
The offeror acknowledges receipt of amendments to the Solicitation for Offers and related documents numbered and dated as follows:				

NOTE.—Offers must set forth full, accurate, and complete information as required by this Solicitation (including attachments). The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

10. AFFIRMATIVE ACTION PROGRAM: The bidder (or offeror) represents that (1) he ( ) has developed and has on file ( ) has not developed and does not have on file at each establishment affirmative action programs as required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2) or (2) he (X) has not previously had contracts subject to the written affirmative action program requirement of the rules and regulations of the Secretary of Labor.

11. NONDISCRIMINATION BECAUSE OF AGE: It is the policy of the Executive Branch of the Government that (a) Contractors and Subcontractors engaged in the performance of Federal contracts shall not, in connection with the employment, advancements, or discharge of employees, or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement, and (b) that Contractors and Subcontractors, or persons acting on their behalf, shall not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for such employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement.

12. IDENTIFICATION OF MINORITY BUSINESS ENTERPRISES: The business entity submitting this offer ( ) is (XX) is not a minority business enterprise. This certification is requested for statistical purposes only and is not a restriction on eligibility for doing business with the Department of Justice. (The term "minority business enterprise" is defined as a business at least 50% of which is owned by minority group members or, in case of publicly owned businesses, at least 51% of the stock of which is owned by minority group members. For the purpose of this definition, minority group members are Negroes, Spanish speaking Americans, American-Orientals, American-Indians, American-Eskimos, and American Aleuts.)

13. CLEAN AIR AND WATER CERTIFICATION: (Applicable if the bid or offer exceeds $100,000, or the Contracting Officer has determined that orders under an indefinite quantity contract in any year will exceed $100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U. S. C. 1857c-8(c)(1)) or the Federal Water Pollution Control Act (33 U. S. C. 1319(c)) and is listed by EPA, or is not otherwise exempt.)

The bidder or offeror certifies as follows:

(a) Any facility to be utilized in the performance of this proposed contract has ( ), has not ( ), been listed on the Environmental Protection Agency list of violating facilities.
(b) He will promptly notify the Contracting Officer, prior to award, of the receipt of any communication from the Director, Office of Federal Activities, U. S. Environmental Protection Agency, indicating that any facility which he proposes to use for the performance of the contract is under consideration to be listed on the EPA list of violating facilities.
(c) He will include substantially this certification, including this paragraph (c), in every nonexempt subcontract.

14. HANDICAPPED: The offeror certifies with respect to the Employment of the Handicapped clause as follows:

1. He ( ) has, (X) has not previously been awarded a contract which included the clause. (If affirmative, execute 2.)
2. The time specified for contract performance ( ) exceeded 90 days, ( ) did not exceed 90 days. (If more than 90 days, execute 3.)
3. The amount of the contract was ( ) less than $500,000, ( ) more than $500,000, and he ( ) has, ( ) has not published his program for the employment of the handicapped. (If more than $500,000, execute 4.)
4. He ( ) has, ( ) has not submitted the required annual report to the Assistant Secretary of Labor for Employment Standards.
5. He ( ) has, ( ) has not made a good faith effort to effectuate and carry out his affirmative action program.
6. He will not award subcontracts to persons or concerns that have not published programs and submitted annual reports as required by the clause.

I. Consideration.

A. For the consideration not to exceed $25,683, the Forest History Society, Inc., hereinafter called the consultant, agrees that Dr. Harold K. Steen, its Associate Director, and Dr. Robert E. Ficken, an historian to be retained by the consultant, will prepare and furnish 10 copies of an objective historical report on pertinent forest management practices on the Olympic Peninsula, with exhibits and digest as referred to on the cover page hereof, in compliance with the requirements and specifications as follows:

B. The scope of the report shall be:

1. The report is to be responsive to plaintiffs' claims that beginning in 1920:

a. The forests on the Quinault Indian Reservation were mismanaged by the Bureau of Indian Affairs in respect to the impact of logging on the environment.

b. The Bureau of Indian Affairs was at fault in failing promptly to adapt its management policies and practices to discerning, meeting, and solving ecological problems as they developed in logging the 4,000 acres of tribal land and the 2,400 allotments, the latter consisting of 40- and 80-acre parcels, on the reservation.

2. The report shall compare in timing, nature, and effect, the management policies and practices of the Bureau of Indian Affairs as applied to the forests on the Quinault Indian Reservation with the contemporary policies and practices applied in the management of national, state, and private industry forests in the Olympic Peninsula in western Washington. Such comparison shall take into account the unique nature of the forests on the reservation by reason of the small amount of tribal forest as compared with the forests on the 2,400 allotments; the fragmentation of the allotted forests into 2,400 parcels held by thousands of allottees; the pressure of those allottees for income so that the primary purpose of Bureau of Indian Affairs management was to produce current income for allottees, which deprived the management of the

alternatives available to managers of forests susceptible of (a) multiple use and (b) so-called sustained yield policies and practices; and the predominance of western red cedar on the reservation as compared with national, state, and private industry forests in the Olympic Peninsula.

3. In respect to paragraphs 1 and 2 above, the report shall cover the historical progression of logging on the Olympic Peninsula beginning in 1920 in relation to any significant impact thereof on the environment in terms of the then current and prevalent ecological sensitivity, if any. The report should show when ecological pressures began to be focused significantly on the reservation, national, state, and private industry forests, respectively, and when the respective managers began to reflect in their management their positive reactions to significant ecological pressures.

4. The report shall determine whether, in the light of the unique nature and situation of the forests on the reservation, as alluded to in paragraph 2 above, there was any significant lag on the part of the Bureau of Indian Affairs forest managers in responding to the movement for preservation of the environment as compared with their counterparts managing national, state, and private industry forests in the Olympic Peninsula.

5. Among phases of comparative forest management to be comprehended by the phrase "preservation of the environment," the report is to treat comparatively fire prevention measures, types and extent of reforestation, and the kinds and extent of clearcutting.

6. In summary of paragraphs 1 through 5 above, the report generally will deal with the issue of whether the Bureau of Indian Affairs, in its management of the forests on the reservation, reasonably conformed with the then current state of the art on the Olympic Peninsula.

7. Dr. Steen and Dr. Ficken shall confer with other experts retained by the defendant so as to coordinate their work with that of the other experts and to avoid needless

duplication of research, study, analysis, and report contents.

8. The report is not to cover the impact of logging on the fish in the streams because that is within the scope of a report to be prepared by another expert retained by the Government.

9. The report is not to cover the effect of logging on wildlife on the reservation because plaintiffs' attorney indicated to the Department attorney representing the Government as defendant that the plaintiffs would not assert any claim for damages for injury, if any, to the game resources of the reservation.

10. In respect to paragraph 5 above, Dr. Steen and Dr. Ficken shall be particularly careful to avoid needless duplication of the work of others of defendant's experts in regard to fire prevention measures, types and extent of reforestation, and the kinds and extent of clearcutting.

C. The format of the report shall be:

1. The report must contain all pertinent data collected in the course of the research, investigation, study, and analysis necessary to substantiate the conclusions therein.

2. All factual statements shall be adequately documented.

3. The supporting documents shall be legibly reproduced in triplicate and marked by identifying numbers as Defendant's Exhibits. Each exhibit is to be keyed to the text of the report by an appropriate footnote or footnotes citing the exhibit number and page reference.

4. The report shall contain sufficient tables and graphs and an adequate table of contents so that it may be readily understood and used.

5. The report shall contain summaries of the qualifications of Dr. Steen and Dr. Ficken as experts in forest history and as the coauthors of the report.

6. The original report shall be typed properly on good quality white bond paper. The copies thereof shall be legibly and neatly reproduced by xerox process or the equivalent. Both the original and the copies shall be signed by Dr. Steen and Dr. Ficken as the authors thereof. The report is to be attractively bound with a plastic comb spine or a type of binding permitting the report to lie flat when opened.

D. The consultant is to prepare and furnish a digest in triplicate of the defendant's exhibits cited in the report as exhibits supporting the factual statements and conclusions therein. The format shall be as follows:

1. The digest shall include the defendant's exhibit number, the date of the document, a general description thereof, the purpose for which the exhibit is cited, its source, and the page or pages of the report wherein the exhibit is cited or relied upon.

E. The time schedule for compliance shall be:

1. Performance by the consultants shall begin February 1, 1976, or, if the contract is not signed by both the consultant and the Government by that date, performance shall begin promptly after the consultant receives the Department's letter notifying it that the contract has been signed by the Government.

2. The preparation of the report is to constitute a 6-month project from February 1, 1976, or from the alternate commencement of performance date under paragraph 1 immediately above.

3. The consultant will assign Dr. ~~Howard~~ Harold K. Steen of Santa Cruz, California, on a one-third time basis for the projected 6-month period to direct the project and to collaborate as coauthor with Dr. Ficken in the preparation of the report.

4. The consultant will arrange with Dr. Robert E. Ficken of Seattle, Washington, to work on a full-time basis for the 6-month period to conduct field research and to

collaborate as coauthor with Dr. Steen in the preparation of the report.

5. A preliminary draft of the report and one set of supporting defendant's exhibits are to be submitted to the Department of Justice within 120 days after the consultant receives official authorization to proceed.

6. Within 30 days after completion of the Departmental review, approval, and receipt of the returned preliminary draft by the consultant, the consultant will place in the mail for delivery to the Department the final draft of the report. Simultaneously, the consultant will furnish the Department with the remaining two sets of supporting defendant's exhibits and three copies of the digest thereof ready for exchange at least 90 days before the date set for trial. If 30 days proves to be insufficient, the consultant may have up to August 2, 1976 to comply.

F. Work to be performed in preparation of the report shall be:

1. Dr. Steen and Dr. Ficken, alone or together, shall each visit and examine the reservation at such times and in such manner as to assure a competent basis to compare intelligently the management of its forests from an environmental standpoint with the management of national, state, and private industry forests on the Olympic Peninsula.

2. Dr. Steen and Dr. Ficken, alone or together, shall each visit and examine national, state, and private industry forests on the Olympic Peninsula so as to have a competent basis to compare intelligently the management of those forests from an environmental standpoint with the management of the forests on the reservation.

II. Time is of the Essence of This Contract.

A. The parties recognize that furnishing on time the report, supporting documents, and digest is of the essence of this contract. The failure of the consultant, or Dr. Steen and Dr. Ficken, for whose services the consultant is responsible, to perform any authorized service within the scope of this

contract or to prepare and deliver on time the report, documentation in the form of defendant's exhibits, and digest shall make this contract subject to cancellation at the option of the Department of Justice.

III. The Confidential Nature of the Report is to be Assured as Follows:

A. Until the report is filed with the Court as a defendant's exhibit, all information contained therein and all parts thereof are to be treated as strictly confidential. The consultant shall take all necessary steps to insure that no member of his staff or organization, including Dr. Steen and Dr. Ficken and those assisting them in the preparation of the report, divulges any information concerning the report to any person other than duly authorized representatives of the Department of Justice.

B. Dr. Steen and Dr. Ficken at their option may select and publish any part or parts of the contents of the report they desire without submitting their proposed publication to the Department of Justice for review.

C. Any such publication, however, is not to take place until after the conclusion of the litigation in which the report was entered by the Court as a defendant's exhibit, unless the Department attorney to whom this litigation is assigned gives his formal written consent for publication before the termination of the litigation.

IV. Payment For Services, Subsistence, and Reimbursement For Travel Expenses in Performance of the Contract Shall Be:

A. The $22,433, which is the amount of the consultant's December 23, 1975, proposal, is to be paid in six payments as follows:

1. The first payment of $3,738 will be made upon presentation of the consultant's invoice showing progress in performance by the consultant. Such invoice may be submitted

March 1, 1976, if work hereunder begins February 1, 1976, or one month after work begins, if the beginning is after February 1, 1976.

2. The second, third, and fourth progress payments of $3,738 each shall be made at monthly intervals after the first payment upon presentation of monthly invoices showing progress in performance.

3. The fifth payment of $3,738 shall be deferred until a reasonable time after the Department of Justice has received and approved, as complete and satisfactory, 10 copies of the report, 3 sets of supporting defendant's exhibits, and a digest thereof in triplicate.

4. The sixth and final payment of $3,743 shall be withheld until after completion of the trial at which Dr. Steen and Dr. Ficken would testify. If the Department decides not to request either expert to testivy, final payment shall be made within a reasonable time thereafter.

B. Reconciling estimates with costs shall be as follows:

1. Because the amounts of the items set out in the budget attached to the consultant's December 23, 1975, proposal are estimates, those amounts may differ from the actual costs incurred. Therefore, the expenditures for all the various budgeted items, other than travel and subsistence, shall be internally reconciled before the sixth and final payment to determine whether there is a net unexpended excess. If less than the total budgeted amount of $21,683 ($22,433 less $750 budgeted for travel) was disbursed by the consultant, the net excess shall be applied to reduce the amount of the sixth payment. If, however, the consultant disbursed more than the $21,683 so that a net deficiency arose, such deficiency shall be borne by the consultant.

C. The $4,000-budgeted item for subsistence and expenses of travel as set out in the consultant's January 7, 1976, letter amending its proposal is to be handled as follows:

1. The $4,000-item is not to be taken into account in determining whether there is a net excess as above outlined.

2. In accordance with Government Travel Regulations current at the time of any travel hereunder, the consultant will be reimbursed for travel expenses incurred by Dr. Steen and Dr. Ficken in performance of this contract.

3. For the purpose of travel and subsistence, Dr. Steen's official headquarters will be considered as that of the consultant's, i.e., Santa Cruz, California, and Dr. Ficken's will be his home in Seattle, Washington.

4. Subsistence per diem will be paid for time in travel and at work beyond the area of the respective headquarters of Dr. Steen and Dr. Ficken.

5. Where the convenience of a rental car will render more efficient performance hereunder, either Dr. Steen or Dr. Ficken may use a rental car, for the cost of which the Department will reimburse the consultant.

6. Where the use of their personally-owned car by either Dr. Steen or Dr. Ficken will render more efficient performance hereunder, the Department will reimburse the consultant at the Government mileage rate in effect at the time of use.

7. The Department is under no obligation to pay the entire $4,000 set out in the consultant's January 7, 1976, letter, but shall reimburse the consultant only for subsistence at the per diem rate in effect at the time of travel and for actual travel expenses.

8. The Department in no event is to reimburse the consultant for more than the maximum of $4,000. Any subsistence or travel expenses in excess of $4,000 shall be borne by the consultant.

9. The Department shall reimburse the consultant for subsistence and travel upon presentation of monthly invoices setting out the details of the costs incurred.

INDEX

Helen Mitchell, et al. v. United States Case

I.

STATEMENT OF CASE

The action by the Quinault Allottees against the United States for failure to prudently manage their allotments is an unique effort to apply the principles of sound silvi-culture management for a single large forest of 170,000 acres to a collection of 2,340 separate forests of 80 acres each. It is apparent that there are no applicable standards to measure the care or lack of care by the United States in the management of the plaintiffs' land. Private industry does not manage its timber in 80-acre tracts. Nor does the Forest Service manage the public timber in such a manner. The standard of care rendered by the United States in the management of the plaintiffs' lands must be viewed as a changing standard which takes into consideration the balancing of many interests which is readily apparent as one views the history of the Quinault Indian Reservation and its timber resources.

The Quinault Reservation contained approximately 190,000 acres of which 175,000 acres were heavily timbered. The reservation has been completely allotted to provide permanent homes for the Indians of the reservation. It was the purpose of the treaty and the Allotment Acts that the allotments would not only provide permanent homes but sufficient land for the support of the Indian family through agricultural development. The Allotment Act does not contemplate that the allotted tract will be managed for its timber but that such tract will be

cleared and farmed by the Indian family for their support. It was apparent in the early history of the reservation that the land was more suitable for timber production than crops. As a result, the Commissioner of Indian Affairs ordered all allotting stopped in 1915 so that the reservation could be managed as a forest. The Commissioner's policy was short lived for, in 1924, the United States Supreme Court ordered the Secretary of the Interior to continue the allotting of the reservation. (United States v. Payne, 264 U.S. 446 (1924)) By the Payne decision, the Supreme Court, rather than the Secretary of the Interior, determined the silvicultural management program for the Quinault Reservation. From that time to the present, there has been a never-ending conflict between efforts by the professional foresters for the Bureau of Indian Affairs to manage the Quinault Reservation upon sound silvicultural principles and the efforts of the allotment owners to realize in their lifetime income from the timber growing upon their respective allotments. The history of timber management on the Quinault Reservation has been one of compromise and adjustment which has satisfied neither the desires of the Bureau's professional foresters nor the allotment owners.

The plaintiffs' complaint attempts to set forth a wide range of alleged nonfeasance and negligent acts by the United States in

connection with the plaintiffs' allotments. It appears that they may be summarized in four general categories as follows:

1. Failure by the United States to provide adequate conditions in the logging of/~~plain~~ the allotted lands to protect the plaintiffs' interests.

2. That representatives of the United States by misrepresentation, undue influence, and coercion obtained powers of attorney from the plaintiffs to enter into contracts for sales of timber and failed to provide the allottees with a full and complete disclosure of information before obtaining the allottees' consent to enter into large-size, long-term contracts.

3. That the United States failed to rehabilitate and provide for regeneration of the timber after it had been cut from the plaintiffs' allotments.

4. That the United States failed to provide for prudent management of an area within the Quinault Reservation known as the Queets Unit in that representatives of the United States encouraged the selling of trust lands and failed to provide a management program for planned harvesting of the Unit.

The plaintiffs' complaint makes general allegations of negligent conduct by the United States in early contracts on the reservation beginning in 1920, however, in subsequent pleadings, it appears that plaintiffs will concentrate on alleged negligent conduct arising out of the contracts connected with the Taholah and Crane Creek Units. The Taholah Unit was contracted to the Aloha Lumber Corporation in 1950, and the Crane Creek Unit was contracted with Rayonier Incorporated in 1952. Consequently, this report will concentrate on the activities of the Bureau of Indian Affairs in the management of the Taholah and Crane Creek Units. The volume of material which has been reviewed in the preparation of this report is immense, and this report is only a summary. It also must be remembered that, with chnaging administrations and personnel, there have been many changes in policies, some of which are conflicting, which have been caused by the many conflicting interests involved in the management of the Quinault lands. It is apparent from all of the information available that the Bureau of Indian Affairs has attempted to manage the lands upon a basis of obtaining maximum income for the allotment owners and, at the same time, to fulfill in some form the direction of Congress to manage Indian forests upon the basis of a sustained yield of management. It is also apparent that the two principles are incompatible.

DRAFT
CRNeely:dwj
7-24-73

II.

HISTORICAL BACKGROUND

of

QUINAULT INDIAN RESERVATION AND ITS RELATIONSHIP TO TIMBER RESOURCE MANAGEMENT

A Treaty was negotiated by Governor Stevens between the United States and the Quinault (Quinaielt) and the Quileute (Quillehute) Indians whereby the Tribes ceded to the United States a large tract of land on the Pacific Coast of Washington. The Treaty was concluded on July 1, 1855, ratified by the Senate March 8, 1859, and proclaimed by the President on April 11, 1859 (12 Stat. 971). There was reserved for the Tribes a tract of land sufficient for their wants within the Territory of Washington to be selected by the President of the United States and set apart for their exclusive use. Article VI of the Treaty ~~Treaty~~ provided that the President may allot the reservation to individuals of the Tribe or families on the same terms and subject to the same regulations as provided in the sixth article of the Treaty with the Omahas. A small reservation of approximately 10,000 acres was set aside for the Quinaults and later enlarged to approximately 200,000 acres by Executive Order of November 4, 1873. The Indian Bureau commenced the allotting of the reservation in 1905 under the Treaty of 1855 and the General Allotment Act of 1887. (24 Stat. 388) By 1911, approximately 750 allotments had been completed.

By the Act of March 4, 1911 (36 Stat. 1345), Congress specifically directed the Secretary of the Interior to make allotments on the Quinault Indian Reservation under the provisions of the Allotment Laws of the United States.

". . . to all members of the Hoh, Quileute, Ozette

or other tribes of Indians in Washington who are affiliated with the Quinault and Quileute Tribes in the Treaty of July 1, 1855, and January 23, 1856. . . ."

In 1914 the Commissioner of Indian Affairs stopped the allotting of heavily forested lands within the Quinault Reservation and directed a cruise of the timber for the purpose of preparing a plan to manage the reservation timber as an integral forest unit. From 1915 to 1917 the Indian Bureau was engaged in the preparation of such a cruise for the management of the reservation timber.

In 1911 Tommy Payne, an Indian of the Quileute Tribe, had selected an allotment of 80 acres which contained 40 to 50 acres of timber land and the remainder being bottom land lying along the Raft River. The Indian Bureau refused to confirm the allotment because of its policy, established in 1914, to withhold from allotment the timbered lands of the reservation for management as a unit. Numerous other Indians had applied for allotments of the timbered land which had been refused, and Payne brought suit in the Federal District Court to compel the Secretary to issue a trust patent. The question presented to the court was whether the land, being timbered, was to be excluded from the operation of the Allotment Act which referred only to the allotting of agricultural and grazing lands.

The Federal District Court, as well as the Court of Appeals, held that Payne was entitled to an allotment and the matter was appealed to

the Supreme Court of the United States, which affirmed the lower courts.

The Supreme Court reasoned that the Allotment Act must harmonize with Article VI of the Quinault Treaty, which made no restriction in respect to the character of the land to be assigned or allotted. The Court stated that the Treaty must be construed liberally in favor of the rights claimed under it, and it concluded that the character of the lands to be set apart for the Indians severally was not restricted. The Court felt that there was no intention to exclude timber lands, and the Allotment Act could not be construed to exclude such lands from allotment without bringing about a materially restrictive change in the terms of the Treaty. The Court concluded:

> ". . . It is not an unreasonable view of the requirement that an allotment shall not exceed 80 acres of agricultural or 160 acres of grazing land to say that it was meant not to preclude an allotment of timbered lands, capable of being cleared and cultivated, but simply to differentiate, in the manner of area, between lands which may be adapted to agricultural uses and lands valuable for grazing purposes." United States v. Payne, 264 U.S. 446, 449 (1924)

With the Payne decision, the plans for the management of the forests on the Quinault Reservation as a unit were abandoned. By 1934 all of the forest land within the reservation had been allotted.

III. Issues Raised by Quinault Allottees

A. Lack of Prudent Management by the Government.

1. Inadequate Formula or Means for Determining Fair Stumpage Prices and Use of Inadequate and Eroneous Data in the Formula.

a. Stumpage Determination Formulas

There are several formulas that have had use in appraisal of timber stumpage. The formulas are similar in the basic factors and vary in the method of determining the profit margin. Thus:

Stumpage = Selling Value - Costs - Profit Margin

1) Valuation Factor - profit margin is calculated by taking a part of the conversion return.

2) Overturn Method - profit margin is calculated on a percent of estimated cost.

3) Profit Ratio Method - profit margin is calculated on a percent of estimated cost and stumpage (stumpage is considered a cost).

4) Selling Price Ratio - profit margin is expressed as a percentage of return on sales and converted to a profit ratio.

5) Investment Approach - profit margin established on the basis of capital engaged.

All these methods have been used by public agencies to arrive at stumpage appraisal although the valuation factor

appears to have been used only by the Bureau of Land Management. The Bureau of Indian Affairs use has followed the U.S. Forest Service practices--from use of the investment approach in the 1920s to use of overturn to present use of the profit ratio. The BLM and USFS currently indicate they use the selling price ratio concept to arrive at the profit ratio.

b. Selling Value

Quinault appraisals since inception of timber sales have used log selling prices to calculate stumpage prices. The coastal marketing area of which Quinault is a part has historically dealt in log values and log markets. Collection of such data by Foresters was an integral part of the appraisal of stumpage. Early sales appraisal relied on the log market data gathered from their own inqyiry and compiled. Although the Pacific Northwest Loggers Association (PNLA) eventually became a published source of log market data that was used to appraise stumpage, it did not exist in the Grays Harbor area in the 1920s. When the PNLA ceased operation, the Industrial Forestry Association (IFA) began collecting and publishing similar log market transaction information.

The USFS also used log market prices in their appraisals until approximately 1960 when they changed to end-product

appraisal. The BLM has traditionally used log delivered to mill pond values. The BIA continues to use log market value for Quinault sales. This is advantageous to the allotted owners since the market reflects the export prices and these have been a dominant factor in the rise in appraised stumpage values. The USFS and BLM timber sales are restricted as to export and thus tend to reflect a domestic price. In comparison State of Washington sales are not export restricted but by law have the impractical requirement of use of domestic log prices in appraisal. Log prices are quoted by grade and the quality of a given timber sale is directly reflected in such application to the appraisal.

c. Logging Costs

Collection of costs applicable to timber being appraised was a responsibility of the local appraising organization. Over time the collection has developed from individual efforts to a system utilizing specialists. Collection by BIA personnel appraising timber has been from purchasers of Indian timber, pursuant to a contract clause, and contact and inquiry to logging businesses in the reservation vicinity. Since appraisal was to log prices only logging costs were applicable or needed. Such collections followed the practices of the times and the recognized

accumulation procedures. USFS cost collections were viewed as a reference and comparison facility and became a source of specific costs as their information became a formal regional publication. With the revision of the Crane Creek and Taholah stumpage rates in 1960, the USFS cost guides were adopted for standard use. Specific cost items not in their cost guide have been developed by the BIA or obtained from other recognized cost sources. Use of this method has been reinforced as a result of purchaser appeals, Congressional inquiry, Secretarial decisions, and purchaser resort to the Courts to contest rate revisions. Most recently, an Arbitration Board established by Quinault officials and Aloha Lumber Corporation, reviewed the cost allowances.

The USFS cost guides derive from their program of cost collection from a sample of their purchasers and is revised on an approximate six-month's interval to reflect current cost collections from purchaser closing fiscal year records. The BLM uses costs derived from their direct time studies, and a variety of sources such as: the USFS, BIA, Pacific NW Experiment Station, Labor Union basic wage rates, manufacturer purchase prices and operating expenses, etc. The State of Washington gathers local purchaser cost data and uses it with cost adjust-

ment tables of the USFS generally. Certain cost allowances are empirically developed or have a standard formulation.

d. Profit Margin

As previously discussed, the manner of obtaining the profit margin is the difference between appraisal formulas. There are various means of determining the factor as related to any formula. Among them are (1) published findings of the Federal Trade Commission and Securities and Exchange Commission, (2) examination of purchaser financial statements (3) special industry studies, (4) timber sale bidding experience. Appraisers may use one or all in arriving at a factor, and usually do, although one may be the rule and the others used to compare and substantiate. The profit margin is composed of several allowances with profit the major one. Others are risk, income taxes, interest on borrowed capital.

e. Contract Administration Procedures

1) Quarterly adjustment of stumpage rates

Procedure is stated in Sections 7, 8, and 9 of the contracts and provides for quarterly adjustment of stumpage rates by application of the listed ratios to the price of logs as published by the Pacific Northwest Loggers Association (PNLA). This quarterly adjustment

feature of each contract was lost when the PNLA ceased to publish log prices

2) Adjustment of stumpage ratios

Procedure is stated in Section 10 of the contracts and provides for the Approving Officer to establish new ratios when the altered situation warrants. The new ratios are then applied as in Section 7 to establish the quarterly stumpage rates. This feature was also lost when the PNLA ceased to publish log prices.

Reference: Taholah and Crane Creek Timber Contracts

3) Use of Grade Information

Original grade estimates were set out in the Forest Officer's Report proposing the Taholah-Queets-Crane Creek Logging Units. By 1957, sufficient data on grade recovery had been accumulated to adjust the original estimates. The grade data had been expanded from each succeeding year of logging and is recorded for each year and accumulative for all years to date. The grade information was applied to log prices using the latest 3-year combined data. With the Secretary's decision of the 1966 Taholah appeal, the Taholah established grade prices are applied on a monthly basis to the log production to arrive at the monthly stumpage rate.

References: Crane Creek and Taholah Grade Recovery Record PNLA Publications

4) Logging Cost Information

The original appraisal and subsequent rate revising actions used cost information the result of study of purchaser cost records and experience in the economic area. The collection of this information became more formalized and specialized to what is essentially present-day methods. In the 1960 rate revision, the BIA adopted the USFS Region 6 cost guides (West Side). In prior revisions they had been used for comparison purposes and for certain specific items of cost. Transportation costs were also standardized in the 1960 revision to use of the State of Washington tariff tables. Items of cost not available otherwise are determined by separate cost determination of the BIA.

f. Contract Administration Problems and Controversy

1) Determination of change regarding ratios

The Crane Creek and Taholah timber contracts provided initial rates (Section 6) and that these rates would be adjusted quarterly (Sections 7, 8, & 9) by application of the listed ratios to the log prices as published by the Pacific Northwest Logger's Association (PNLA). This quarterly adjustment feature was lost when the PNLA ceased to publish log prices in November 1962.

In addition to the quarterly adjustments provision made for adjustment of the ratios (Section 10) by the Approving Officer when an altered situation warranted. This section language received varied interpretation. The purchasers held that only major changes in economics should be considered; however, the view of the BIA that changes such as costs, log prices, in addition to other changes are the proper considerations and this view prevailed and was presumably accepted. The purchasers, however, retained opinion on various aspects of the ratio changes while accepting them.

2) Change in log market information source - Revision of Stumpage Rates

With the dissolution of the PNLA November 13, 1962, a new source of log price information was required and the decision of the Industrial Forestry Association (IFA) to publish log prices was welcomed. The stumpage rate change procedure moved to Section 11 of the contracts, which stated rates would be revised "in accordance with the trend of economic conditions in the West Coast logging and lumbering industry (Taholah) and West Coast forest products industries (Crane Creek). These controversies subsequently developed.

a) Purchasers maintained that the IFA was essentially the same as the PNLA so that stumpage rate changes should continue to be made under Section 10.

b) The difference in wording "logging and lumbering" versus "forest products industries" was noted by the purchasers and in their interpretation required measure by different means.

c) The same question of the application to major changes only, was presented by the purchasers.

All of these differed from the BIA view which was sustained in the subsequent revision actions and the BIA view has now become accepted without the recurring controversy, although the purchasers remain as holding their own opinion.

Upon tentative decision based on examination of indicators that economic conditions have changed to an extent to warrant revision of stumpage rates, a report is prepared entitled "Trend of Economic Conditions Relative to Revision of Stumpage Rates." This report is presented to the Approving Officer with recommendations as to proceeding under Section 11 of the timber contract. The purchaser and Indian representatives are advised and a period of consultation is established.

The report and other information is supplied the parties. Upon conclusion of the consultations required in the revision process, recommended stumpage rates are presented to the Approving Officer which become effective upon his notice to the purchaser and the Indian representatives.

The report prepared is designed first to examine information reflecting the economic trend and, second, to calculate indicated revised stumpage rates.

The processes, ratio changes using PNLA log prices, and revised stumpage rates using IFA log prices have been characterized by intensive and continuing contention between the purchasers and the Bureau of Indian Affairs, including Secretarial appeals and recourse to the Courts. Only recently, with the revision for effective date of August 1, 1971, in which rates were reduced, have the Indian representatives become active contenders against both the purchaser's contentions and the revision process practiced by the Bureau of Indian Affairs.

Aside from the quarterly adjustments, the ratios and stumpage rates have been reviewed thirteen times over the period of the contracts, the last nine being revisions under Section 11.

3) Comparison with other stumpage sales

Almost since inception Crane Creek and Taholah rates have received comparison with other timber sales in the area. Generally, this was comparison with USFS sales. Since the export market became a major factor in log prices, the comparison has shifted to small, private and State of Washington sales, and more so as USFS has become subject to export restrictions. A list and chart of the USFS comparison is available.

4) Application of log prices and logging costs

Purchasers have consistently raised the question as to use of the IFA data: (a) inclusion of the Puget Sound market, (b) exclusion of logs produced for inter-company use. Under (a) the argument arises that little if any Crane Creek and Taholah production enters the Puget Sound Market. In opposition, the BIA has contended the Grays Harbor market alone is not representative. Under (b) the purchasers argue the IFA data is overweighted to export prices and that the export market tends to handle the better quality logs with the lower grades entering inter-company use, which IFA does not report.

The logging cost guides of the U.S. Forest Service represent West Side operations of Washington and Oregon.

The purchasers argue that the Quinault conditions are not well represented. Their costs claims are consistently higher and due, in their opinion, to the uniqueness of the Quinault forest. Beyond the basic difference, the application of the cost guides adjustment features are contended as to the factors applicable and particular costs not included in the USFS guides present special problems of application.

5) Congressional inquiry into Quinault Sales

The Quinault sales have been the subject of two inquiries. (a) Federal Timber Sale Policies - 1955-56, (b) Timber Sales--Quinault Indian Reservation - 1957. These inquiries discussed many aspects of the BIA timber sale policy and practice.

6) Purchaser appeals and influence on contracts

The purchasers, without exception, raised objections on each and every change in stumpage rates. The first formal appeals were made in 1960, which was the fifth time the stumpage-to-log price ratios had been reviewed. Out of each review and the appeal came contract interpretations that became procedure for future administration of the contracts. The 1960 appeals were denied by the Commissioner. In 1966,

the stumpage rates were appealed by Aloha Lumber Corporation (Taholah Unit). This was the second rate revision under the Section 11 provision of the contracts. A Secretarial decision of March 10, 1967, generally upheld the Commissioner's stumpage revision action; however, Aloha proceeded to the courts, which culminated in a more or less neutral Memorandum Order dated September 9, 1969. However, further definition of the stumpage revising process was gained. Aloha continued to appeal each successive rate revision on the basis of their court action. ITT Rayonier meanwhile continued to argue differences in the several rate revisions and eventually appealed again to the rates to be effective July 1, 1969. This appeal was also denied. Aloha finally settled their appeals in 1969 in an Agreement dated May 28, 1970, negotiated directly with Quinault representatives.

7) Consultation Processes

Both Sections 10 and 11 of the timber contract provided for consultation with the purchasers regarding intent to change stumpage-to-log ratios or revision of stumpage rates. The basis for the consultations, once notice has been given, has been the BIA report on the proposal. The consultations have had varying degrees of formality. Usually the purchasers make both verbal and written presentations. Consultations

with the timber owners, tribal officials and allottees, in general, are also held. The more recent trend has been for the consultations to be held jointly with all partics represented. A report of the meeting is furnished to the Commissioner citing any recommended changes to the stumpage rates as a result of the consultations.

g. Period since October 18, 1965

The previous four sections were designed to cover in a general manner the timber cutting activity over the 50-year period. This section is intended to have considerably more detail; but as the problems and activity of the six-year period are culmination of the foregoing period, much of the material previously mentioned will have current application.

October 18, 1965, is an appropriate time to start since at that approximate time a revision of stumpage rates was being prepared and that particular revision and appeal by the purchaser would have continuing effect and attention over the entire period following to date. Also, in 1965, the concern with proper treatment of streams was being given pointed attention. These two factors, revised stumpage rates and treatment

of streams, are probably the main factors of the current controversies.

1) Revision of stumpage rates for effective date of Jan. 1, 1966, Taholah Logging Unit

Rates were also revised on the Crane Creek Unit; however, they were accepted by the purchaser with what had become a pattern of consultation contention. The Taholah rates, however, were appealed to the Secretary of the Interior and, eventually, to the District Courts. The appeal is extensively and intensively documented in a mountain of current files. Aloha Lumber Corporation had been newly acquired by Evans Products Company and a mixture of the old and new regimes was concerned on the purchaser's part.

The report revising stumpage rates followed the procedure established in previous actions. This action was, however, only the second since the demise of the Pacific Northwest Loggers Association (PNLA), which was the source of log prices used to review the stumpage-to-log price ratios under Section 10 of the Taholah contract. The current source of log prices was the Industrial Forestry Assocation (IFA), and the revision action under Section 11 of the Taholah contract.

Procedure had also been established to use of the USFS Region 6 logging cost guides. In examining the guides available in 1956, the BIA concluded that the Forest Service cost guides were not representative of the cost situation. As a result the previous report costs were advanced on the basis of the division of the increased value of logs by 75 percent to the stumpage owner and 25 percent to the purchaser as increased cost. This division was the same practiced in the quarterly adjustment features of other contracts let for sale of Indian timber. The BIA was of the opinion this allowance legitimately covered the cost increases. While the BIA was eventually criticized for the method used to establish costs, its judgment as to the USFS costs was substantiated in that the cost guide procedure and base was amended and changed by the USFS.

2) The Aloha Lumber Corp. Appeal

The appeal is well stated in the Secretary's decision on the appeal. It states:

"Aloha's appeal is based upon the ground that the decision of the Commissioner is contrary to the basic intent of the contract, because the Commissioner in

establishing stumpage rates: (1) arbitrarily and capriciously disregarded actual costs of production existent in the industry; (2) arbitrarily and capriciously utilized a grade recovery factor which substantially overstates the actual grade of timber which can be expected to be realized in present and future operations by Aloha; and (3) selectively utilized trends of economic conditions in the West Coast logging and lumbering industry which tend to increase stumpage rates, while excluding from consideration trends which have the effect of reducing stumpage rates."

The appeal can be reduced to five separate issues:

a) Whether the stumpage adjustment procedures set forth in Section 9 of the contract are applicable;

b) Whether the Bureau's profit and risk allowance is adequate;

c) Whether the Bureau's use of a three-year average grade recovery is proper;

d) Whether the Bureau's method of computing weighted log values is proper; and

e) Whether the Bureau's failure to allow an increase in logging cost is proper.

3) The decision of the Secretary of the Interior on the appeal.

A hearing was held at Portland, Oregon, by Deputy Assistant Secretary Robert E. Vaughan, at which time testimony was received from representatives of Aloha, the BIA, and certain Indian timber owners. As a result of the hearing and information submitted, the Secretary decided as follows:

a) The Bureau's use of Section 11 in the January 1, 1966, adjustment and future adjustments under the contract is hereby determined to be proper.

b) The Bureau's allowance of 10.22 percent profit and risk factor is proper under the contract.

c) Aloha should pay the timber owners for the actual grade of timber recovered.

d) There is no reason to allow Aloha the increased cost of transportation to the Puget Sound Area.

e) Aloha has not been disadvantaged by the cost allowances used; consequently, Aloha's appeal with respect to the Bureau's treatment of logging costs is hereby rejected.

Upon subsequent application, the decision was modified to provide that the BIA continue to pay the allottees on the basis of a single unit-wide stumpage rate for

each species. This allowed the calculation of monthly stumpage rates by species instead of separate monthly rates for each allotment by species. It did not affect the prices to be paid by Aloha.

4) Appeal to the District Court and Appeal Settlement

The action was brought by Aloha Lumber Corporation for judicial review of the decision of the Secretary of the Interior of March 10, 1967, and sought return of monies paid under protest by Aloha. The court review produced a Memorandum Order No. 7198 which remanded the matter back to the Secretary to:

a) Obtain adequate data as to any increment in the cost factors allowed in the 1964 adjustment which were reflected in a trend of economic conditions in the West Coast logging and lumbering industry as of the 1966 adjustment; and, determine whether disallowed costs had become at that time a normal cost in the relevant industry and, if so, determine a base for such cost as of the time the challenged adjustment was made.

b) Establish a reasonable profit and risk factor in accordance with the trends in the West Coast logging and lumbering industry.

The order also suggested that the BIA consider broadening the base for measuring log values (i.e., include the Columbia River market).

As the matter was drawn out after the Court Order, the Secretary indicated he would be amenable to a settlement agreement that had favor with the tribe and the allottees. In a series of exchanges and meetings between Aloha and tribal and allottee representatives, an "Agreement of May 28, 1970, was completed and received approval of the Secretary on August 7, 1970. The approval was conditioned to written endorsement of modifications to the agreement. These provided:

a) The currently used 30-day notice prior to adjustment remained in effect. If necessary, an additional period of time will be granted in which to complete arbitration, as provided in the terms of the agreement.

b) It shall be understood by all parties that the Secretary expects to accept the decisions rendered by the Arbitration Board pursuant to paragraph 3 of the agreement, as modified, but the Secretary shall not be bound to approve any arbitration decision which might be in conflict with the interests of the Indian or the United States.

With the completion of the agreement, the funds held in escrow were distributed as set out in the agreement.

5) Procedures arising from the appeal and decisions and the settlement.

At least as far as the Taholah contract was concerned, the revision of stumpage rates appeared to be reduced to a technical and established procedure in the arriving at log values and logging costs. The role of the "Allottee's Committee" to represent the allottees in general was given credence, and a provision for arbitration beyond the consultation stage was provided for in subsequent rate revisions.

Application to the Crane Creek Unit, while not exact, would tend to follow the same pattern with the exception of the Arbitration Board.

6) Subsequent series of revisions of stumpage rates

Stumpage rates were revised for effective dates of 1/1/68, 1/1/69, 7/1/69, and 8/1/71. Aloha appealed the first three on the basis of any increment derived from their appeal of the 1/1/66 rates. ITT Rayonier appealed the 7/1/69 revision, and upon denial of their appeal, went on record as disagreeing with the decision of the Secretary on several factors pointed out by ITT Rayonier. They urged that a joint effort to establish fair and workable procedures for future use and to pursue other areas of controversy for their reduction or elimination.

The revision for effective date of August 1, 1971, introduced new facets to the process. The consultation on the Taholah rates did not obtain the desired agreement between the purchaser and the allottee representatives and the arbitration feature of the Agreement of May 28, 1969, was invoked. This Agreement provided in paragraph 3:

> It is understood of all parties that written notification will be received 60 days prior to the effective date of an adjustment. All parties will exert all effort to negotiate in good faith future stumpage adjustments prior to effective date. Should there be disagreement on specific items 40 days after start of negotiations, the specific items shall go to binding arbitration for a period of not more than 40 days, at which time a decision shall be rendered by the Arbitration Board. The Arbitration Board shall consist of three persons, one chosen by land owners and one by Aloha. It shall be incumbent upon the two selected to choose the third arbitrator who shall act as chairman. The third shall be selected within a 2-day period. If they are

unable to select a third party, two new arbitrators will be selected. In their determination the arbitrators shall be guided by the terms of the Taholah contract. Each party shall pay fees, cost, expenses, if any, of his arbitrator. The third arbitrator costs shall be shared equally by both parties.

The Agreement containing the arbitration feature was approved by Assistant Secretary Loesch on August 7, 1970, with conditions concerning the arbitration:

a) That the currently used 30-day notice prior to adjustment of stumpage rates remain in effect. If necessary, an additional period of time will be granted in which to complete arbitration, as provided under the terms of the agreement.

b) It shall be understood by all parties to the agreement that the Secretary of the Interior expects to accept the decisions rendered by the Arbitration Board pursuant to paragraph 3 of the agreement as modified by paragraph 3 of this letter, but that the Secretary shall not be bound to approve any arbitration decision which might be in conflict with the interests of the Indians or the United States.

The Arbitration Board met at Seattle, Washington, on July 21, 1971, and issued a decision under date of July 27, 1971. The Board consisted of Judge E. C. Cushing, Chairman, I. L. Trieger, Aloha, and N. D. Terry, Quinault interests. The Board reviewed the background and detail of the proposed revision of stumpage rates, and found for a trivial difference which changed logging costs 25¢ with corresponding 25¢ reduction of the rates developed by the Bureau of Indian Affairs. The substantial reduction of stumpage rates made effective August 1, 1971, derived from the prices of the log market, not from action of the Arbitration Board although the board recognized the log price effect. Upon the Board's decision, the allottee representative notified his withdrawal from the Board and that the Board's recommendations were not acceptable. The Secretary, however, accepted the Board's recommendations and made the revised rates effective as of August 1, 1971. The Crane Creek rates were also revised and the revised rates made effective August 1, 1971.

ITT Rayonier had objected vigorously to the revised rates, which were a reduction of rates, differing with the BIA report approximately $4 per thousand

board feet. The Aloha differences with the BIA report that ended up with the Arbitration Board were $.64 per MBF.

The Quinault Tribe and allottee representatives refused to accept the revised stumpage rates but did not formalize an appeal. Instead, they resorted to blockage of the access to the logging unit. Aloha Lumber Corporation proceeded to the U.S. District Court for relief against the blockage and were successful in obtaining a preliminary injunction against the tribe, the committees, and named individuals--date of September 30, 1971.

ITT Rayonier chose to meet with tribal representatives and, accordingly, committed themselves to pay the stumpage rates in effect previous to the revision. Upon petition to the Secretary by both parties, the previous rates were restored for Crane Creek stumpage.

III.A.

2. Presentation to the Market not to Best Advantage to the Allottee

a. Size of Logging Units

(1) General desire of Indian owners to gain some immediate timber income.

As could be expected, upon allotment the recipients thereof desired to obtain income from their timber holding. Since the reservation timberland was in an area with little access development, the immediate demand arose from the allottees with the more accessible timber. The several large initial sales of the 1920s were among other considerations predicated upon generating timber volume and value that would sustain the large costs of access construction. As such access was constructed, the access relationship of the more distant adjacent timberstands were changed so a continuing demand for income from succeeding groups was present. Upon the success of cutting in the initial large units, the idea of contracting all the reservation timberstands for cutover became popular. An early result of this idea was the attempt in 1929 to contract all the area north of the Quinault River in four concurrent large timber sales. At the same time, requests for fee patent, with the purpose of timber liquidation, were being advanced.

The depression years and World War II acted as a depressant on the "contract all" idea but it gained popular support again

in the latter 1940s and, eventually, resulted in the Boulder Creek, Crane Creek and Taholah contracts. The Queets area (the remaining approximately one-third of the area north of the Quinault River) did not receive a bid and was then subject to its own particular history. Evidence of the desire that all ownerships obtain some immediate income was the criticism of the single Taholah proposal of 1946-48, the requirement of advance payments, and the cutover in a period considerably less than a rotation.

(2) Opportunity to practice under a plan of orderly cutover of the forest.

The forest survey of 1915-17 was conducted with the view of developing forest management plans for the reservation on sound forestry principles. The resumption of allotting subsequent to the Payne decision was very discouraging to Foresters concerned. The clamor for individual interest income resulted in the contracting of five large units to be cut concurrently. These contained the bulk of the timber stands south of the Quinault River and provided for cutover in approximately 18 years, whereas the rate of cutover under an 80-year rotation would have doubled the time period ~~for~~ to cutover the area. At least the large units offered a reasonable control of the cutting progression. In actual practice, the cutover of the units

proceeded much slower than contracted and tended to approach the rotation time interval. The cut was a progression of clear-cut, as was the general practice of the times. With the slower rate of cutting, regeneration of the stand by natural means was generally sufficient; however, it was recognized that a program of reforestation by plantation was also necessary to supplement the natural regeneration. In 1927-28 a second group of contracts of moderately large size were contracted and cut over concurrently with the much larger sales previously contracted. During the 1930s and 40s, the volume cut declined far below that of the 1920s.

Around 1935, the practice of very small sales on individual allotments became the contracting pattern with several hundred eventually occurring. The practice of individual tree selection was also introduced as a cutting method and was a point of contention and argument for many years. Initially, the large volumes contracted and the multiplicity of ownership under the large contracts, directed the Forestry program as one of the services to the contracts. Eventually, the multiplicity of individual allotments contracted had a similar effect even though the volume being harvested from the reservation had a large decline.

The investigative and management planning side of Forestry practice was relegated to a minor effort intermittently inserted as other work demands allowed. All during these years, there was continuing

examination of the Forestry program in terms of program funding in relation to the administrative fees collected with the result that staffing was controlled at a minimum level and this was clearly the intent of Congress.

(3) Opportunity to gain some income for a wide group of allottees within an immediate period and within contract length period.

The contracting of timber in volume occurred at three points in the Quinault cutting history:

1920-23	~~Estimated~~ Volume	~~1,478~~ 1,993 MM Board Feet
1927-28	"	~~116~~ 241 MM Board Feet
1950-52	" (est.)	~~1,201~~ 3,153 MM Board Feet

As proposals were made by Forestry, they were met with the question as to how many individuals would be affected; and the groups who were not affected would request equal consideration. The net result was then a group of sales covering a major portion of the reservation presented for sale and cutting concurrently.

From the beginning, the timber contracts provided that the purchaser make advance payments upon the completion of the individual allotment contracts grouped under the general contract. Until 1950, the long-term contracts provided a series of advances totaling 30 percent within six years and 50 percent within nine

years. Recognizing the urgent demands for immediate income prospects, this was changed to 25 percent within 30 days and 50 percent within six years. Accordingly, the already present restrictive condition of prospective purchaser ability to invest capital in advance payments was increased. This however was ameliorated by the conservative timber volume estimates. Because of the larger investment and the variance of cut-out experience by allotment, the estimated volumes were held to conservative levels to reduce the risk that advance payments would exceed actual timber present.

(4) Efficiency of sale preparation and administration of larger and fewer sales.

Already with the initial allotting, the timber sale administration was to be one of intensive record and field activity. With the allotting of the remainder of the reservation, the die was cast that all timber sales would be similarly complex. It was natural and necessary that the forest administration seek any of the remaining alternatives that would provide some efficiencies. The major alternative available was a few large sales. Even so, the intensive record of individual scale and monies, establishment of boundaries, and control of log taking remained and left little time for other management activity.

Timber sale administration can be divided into (a) accumulation of data and information on the proposed sale into a Forest Officer's

Report, (b) advertisement and contracting, (c) logging planning, (d) sale operation and regulation activity, (e) scaling, (f) record of timber volume and money, (g) rate redeterminations, modifications, etc. Large sales provide the opportunity to handle certain of these on a group basis and organization of the intensive individual allotment detail for efficient handling. In terms of volume of timber harvested, the efficiency differential can be several multiples.

(5) High cost of handling transportation system into the roadless area.

From the onset, plans for logging the Quinault Reservation were dependent upon extension of railroad systems which were the access to markets. These extensions would be solely for the transport of logs with the accompanying high cost against stumpage. It was therefore accorded equitable that the system cost be borne on a broad basis; however, the higher volume resulting would reduce the risk due to development cost and increase the selling potential. The cutting pattern of the times (progressive clearcut) also was in part the need to amortize the high construction cost in a relative short term. With the advent of national and regional attention to highway construction and the improvements in truck equipment,highways became more and more a system connection to market; however, the bulk of the uncut Quinault lands were still

relatively roadless and again the construction was to be borne by the stumpage alone.

b. Period of time to complete the timber contract

(1) Longer period allowed larger size.

(Unit size is considered in the previous Section)

(2) Time interval between cutting of adjacent stands to allow the timber stand to regenerate.

From a regeneration view, the time interval is solely to provide seed source to the areas as they are cutover. Both progressive clearcut and staggered clearcut blocks appear to give success. The progressive clearcut areas, however, experienced successive fires and lack the effect of green timber fire-breaks present in the staggered block system. The staggered block became the desired system. Ideally, to regenerate itself completely, the cutting period would be long enough to have seed bearing trees regenerated on the first series of staggered block cutover to seed the last series cutover.

c. Alternative plans and views as to timber harvest and provision for income.

(1) Progressive harvesting of the reservation on a rotation of approximately 80 years with access by sale progression.

The progressive harvesting was the general pattern of the logging units contracted in the 1920s. It depended upon extension of the

railroad logging systems that logged the area south of the Quinault River on through the remainder of the reservation; and further, that the regional cut would progress beyond the reservation into the untapped timber resources of the Olympic Peninsula held in National Forests. The rejection of the bids on the four large Quinault units in 1929 followed by the depression and World War II halted this expansion and completion of the cutover of the reservation.

(2) Sale as one or a few large units at the same time.

This was a repetition of the progressive harvesting idea advanced again strongly after World War II. There was reluctance to expose all the remaining timber in one sale. The proposals to make a sale of part of the area at a time when even a large sale met with resistance on the basis that all allottees with timber holdings in the relatively untouched area north of the Quinault River should derive prompt benefit of whatever pattern of sales was decided upon. Eventually, agreement was to divide the area into four logging units to be sold at the same time.

(3) Purchase by the United States.

In 1939 the Department of the Interior submitted a draft of proposed legislation for the Government to acquire the lands of the Quinault Indian Reservation. Presumably, the lands would then be put into national park or forest status. The legislation did not receive attention beyond the proposal review.

(4) Incorporation of allotted timber holdings.

Various ideas centered on the pooling of the timber interests and issuance of shares were advanced from time to time. In 1944 the Acting Director of Forestry suggested an organization which might be named the Quinault Timber Association. Similar ideas had been expressed over the years as a solution to the regulation of income to all the timber owners and necessary support was never attained.

(5) Allow individuals to sell timber by allotment.

With the reduction of timber sale activity in the 1930s, individual allottees were able to locate demand for readily accessible timber. Literally hundreds of such sales have been made. Due in part to the use of selective logging which removed a minor part of the timber stand, there was allottee contention that they be allowed to enter into sale of their timber without Government regulation or contracting. This movement was ended in the case of Eastman vs. United States. In the 1960s the provision for issuance of Special Allotment Timber Cutting Permits was initiated. This permit allows allottees who are considered capable of handling their own timber business affairs to log and/or sell their timber upon issuance of the permit to them. Practically all sales of timber on the Quinault are now by special permit.

d. Crane Creek and Taholah Contracts.

(1) Presale discussion and preparation.

The area north of the Quinault River of which Crane Creek and Taholah are approximately two-thirds was proposed and advertised for sale as early as 1929, and bids were actually received but were rejected. In the early 1940s, interest was renewed and eventually evolved to the proposal of the Taholah Logging Unit in 1946. Various objections to the proposed sale were voiced and the alternatives of a cooperative association, Indian enterprise, a larger overall unit were forwarded and discussed. Subsequently, the proposal was made entitled the North Quinault Logging Unit. This would encompass all the area north of the Quinault River and satisfy the main objection to the Taholah proposal, i.e., that only a portion of the allotted interest of uncut timber would realize any stumpage return in the immediate future.

The Bureau of Indian Affairs was reluctant to undertake sale in one unit, and finally decision was arrived at to divide the area into four units, Taholah, Crane Creek, Queets, and Boulder to be advertised for sale at the same time.

(2) Solicitation of allottees consent to P/A.

Realizing that any large sale of timber or sale of the remaining uncut area was a complex undertaking, the task of checking inheritance records and location of allottees and heirs was carried

forward while the sale proposals and alternatives were being discussed. Some 1,380 allotments with 2,500 interests were involved. By the time the Taholah, Crane Creek, Queets proposal was presented in 1948, approximately 60 percent of the allotment owner interests had signed consents to the sales. Information to the allottees was presented in meetings and individual inquiries, both in person and by letter. The level of interest among the timber owners was high with resultant wide discussion and dissemination of information. A vast majority favored prompt sale of the timber.

(3) Advertisement and subsequent contracting.

The Crane Creek, Taholah, Queets, and Boulder Creek Units were advertised for sale in 1949. One bid for the Crane Creek Unit at advertised rates was received by Rayonier Incorporated. They subsequently chose to forfeit the bid rather than execute the contract; this was no doubt due to the decline in log prices during 1949.

Under authority of 25 CFR _____, the Boulder Creek Unit was sold by negotiation to the Wagar Lumber Company and the Taholah Unit was similarly sold to the Aloha Lumber Company. In 1952, the Crane Creek Unit was again advertised for sale. Rayonier Incorporated submitted the only bid and executed the contract in June 1952. The Queets Unit was not readvertised at the time and treatment of the area became a pattern of small sales of allotments that were the more accessible and of better quality. The fee

patent and supervised sale policy of the BIA also provided outlet for timber owners to market their lands upon which the timber was the principal value.

(4) Contract terms for specific purposes.

a) The advance payment schedule required 50 percent payment of estimated value within six years with 25 percent of execution of the allotment contract subsidiary to the general contract.

b) Stumpage rates to be paid in each succeeding quarter determined on basis of log prices and application of fixed ratios to the log prices.

c) Ratio changes as altered situations would warrant.

d) Review of stumpage rate in event PNLA log prices are not representative or are unavailable.

e) The Crane Creek contract provided for possible scale by a log scaling bureau.

III. A.

3. Early Removal of Higher Quality Timber Stands

a. The order of removal

Three parameters generally controlled the cutting progression. These were (1) the progressive construction of mainline and recording roads so that cost-production relationship was reasonably maintained, (2) the silvicultural system required the leaving of uncut blocks of timber for purposes of regeneration of the timber stand, and (3) the merchantable aspect of the timber encountered in the development area. The readily accessible areas on the south part of the unit were naturally entered first and they seem to have been the better quality stands. Generally, the unit has been developed in an orderly manner as indicated by the succession of maps of cutover. What advantage is present overall as to order of cutting based on taking better quality first is indeterminate since, eventually, all the designated timber will be cutover and the stumpage rate will reflect the grade present.

b. Logging Plans

Section 22 of the Crane Creek contract specifically provides that the purchaser shall submit a plan of his logging operations for each contract year. Section 2 of the contracts and Section 9 of the General Timber Sale Regulations also bear on timber to be cut and logging progression, and while less specific is used

to require logging plans for the Taholah cutting. Initial guidelines for the preparation of logging plans were developed from the inception of the contracts. They provided that the purchaser would submit a plan for the year's cutting to be reviewed by the Officer in Charge. Approval of the finalized plans is made for the Taholah Unit by the Superintendent; for the Crane Creek Unit, the Area Director. The plans have been flexible to allow changes in areas of logging to meet market conditions, income needs of individual allottees, silvical problems, and the salvage of timber damaged by blowdown or fire. At the same time, the economics of construction of the access to the timber stands and the staggered block cutting requirements limited the choices available. In determining both the road development and the block layout, purchaser and Forestry personnel maintained close field contact and examination so that the plans, when formalized and presented for review, contained by and large concensus already reached.

The key document to the formal presentation was the map of the logging unit showing logging and road development progression and the proposed new cutting blocks and road layout. As time passed and issues arose, the formal documents became more extensive and various field data listed. The map, however, remained the principal document. At present, the logging plan has become an intensive document developed and reviewed with

Indian representation, (B.S.F. & W.L.) purchaser, and BIA input. The plan investigations also serve to obtain factors necessary to the use of the U.S. Forest Service logging cost guides and the revision of stumpage rates.

III.A.

4. Presale estimates of volume and grade were inadequate

Quinault timber sales from inception in the early 1920s used the cruise information of the 1915-17 forest survey. In the 1920s there was some apprehension as to these volumes due to the incidence of blowdowns. The sales proposed in the late 1940s also used the 1916 survey for volume estimation. The need for a current re-cruise was recognized and also that the overall volume present in the proposed timber sales was far in excess of the old forest survey estimates. This overall knowledge, however, was not available to the degree that it could be applied to volume prediction on each of the hundreds of individual allotments included in the timber sales proposed. Program facilities were not available to make the new cruise and the intensity that would be required to identify estimated volumes on each allotment would have entailed long delay in presentation of the timber sales even if the Forestry program was so supported by funds and personnel.

Under the premise that prompt action to present the timber for sale was overriding, the sales were made on the 1916 forest survey information and the advance payments calculated accordingly.

Grade information was available only as the experience of previous timber sales and comparison judgments of the foresters from their field examinations of the timber stands. As actual grade recovery from the units (Crane Creek and Taholah) became available, application was made in determination of log value used in the calculation

of stumpage rates.

The original grade recovery estimates had inaccuracies. Considering the major species, redcedar and hemlock, on the Taholah Unit the redcedar recovery has been lower in No. 1 logs and higher in No. 2 and 3s. On the Crane Creek Unit the redcedar recovery has been much better than estimated. The hemlock recovery on both units has been considerably less than estimated in the peeler and No. 1 grades. The evidences of these lesser grades were immediately apparent when grading of logs became part of the scaling process. Grade recovery data by year and accumulations by year are available.

It is difficult to measure the effect of these estimates as to value received. The long-term nature of the contracts has generally required that all the factors be examined in the light for changes that have occurred in markets and operating procedures. The volume cut under the timber contracts beyond the sale estimates had limited effect on appraisal since average industry costs were used with only partial adjustment as to sale character. The amount of timber taken was measured by actual scale and payment received accordingly. The contracts also contained provisions for price adjustments which, among other factors, would consider the additional volume to be cut. The increase in sale volume over estimates was also due in part to the changes occurring in respect to merchantability of a particular timber stand. The viewing of grades of logs also changes as the log values rise and utilization practices progress.

III.A5. Use of inaccurate and improper scaling procedures.

The log production from Indian lands has traditionally been scaled by employees of the BIA. The method employed is stated in the General Timber Sale Regulations of 1920 and the Standard Timber Contract Provisions of 1960. These employ in general recognized scaling rules and techniques. Scaling frequently reflects the practical consideration of the physical conditions that exist at the scaling location. Differences as to specific application of rules have occurred and special rules are used where specifically provided by contract or regional rules. Where Indian timber contracts have provided for and used the services of Scaling Bureaus, or scaling by another Federal agency, the BIA has previously entered into agreements as to how the scaling is to be accomplished and the scaling rules to be followed.

The West Side (Coastal) scaling procedures have required, due to the many land ownerships of the area, that logs be marked by a registered brand as they are yarded so that ownership is defined. Such practice fitted the multiple ownership of Quinault. The log brand is recorded in the scaling action. The handling of the scale sheet recording the log is prescribed by intensive instructions as to record and payment to the stumpage owner. The procedural flow is as follows:

(1) A logging plan consisting of several logging blocks is prepared for each logging year.

(2) Log brands are assigned by allotment and the logs are branded

as they are felled and bucked according to location by property lines.

(3) Logs are yarded and loaded and a truck ticket prepared listing the number of logs and brand.

(4) Upon delivery to the scaling point, log load is scaled and recorded by brand.

(5) Scaling Bureau issues scale record documents in required detail.

(6) Scale documents are posted to provide volume total and total by allotment.

(7) Scale report by allotment prepared and monthly Report of Timber Cut totaling all scale reports prepared.

(8) Scale reports posted to Timber Money Record.

(9) Journal Vouchers prepared for distribution of monies to appropriate accounts.

Parallel with these actions are control and audit processes which include technical and accounting check of the actions, estimates of timber cut and not scaled, and advance cutting, collection of advance deposits from the purchaser.

Accepted practice is to use the scaling systems and rules common to the market area as the selling values and costs used to determine the conversion return as based on the expectation of the market. Changes in scaling rules effect the log value reflected in the market as the rule becomes general use. Where a long-term timber contract has provisions for re-examination of stumpage

rates and inserts current market value which reflects the common scaling rule, a rule of the contract can be changed by the realization adjustment, and subsequent use of the common rule ~~can be had without further adjustment or concern.~~

Water scaling was a common practice for scaling logs since much of the log movement was by rafts. This method became less acceptable as log values increased because it did not allow the accuracy of measure and observation demanded in the marketing of logs. It was discontinued for Indian logs in _____.

Acceptance of third party (Scaling Bureau) scale became widespread by 1950 and it was natural that the BIA institute such scaling in Indian timber contracts.

~~IV. 4.~~

The Crane Creek contract provided for such scaling and the Taholah contract was modified March 21, 1956, to allow use of a Scaling Bureau. The change required the purchaser to enter into an appropriate agreement with the Scaling Bureau. A corresponding scaling agreement between the Bureau of Indian Affairs and the Scaling Bureau was also executed.

With the adoption of scaling by the Scaling Bureau, the Scaling Bureau's rule respecting scaling, grading, and merchantability became the applicable rules as to material to be taken as a merchantable log.

This resulted in certain changes as the Scaling Bureau rules differed substantially from those practiced by the BIA and stated in the contract and general provisions. The most obvious of these include:

(1) Scale on the basis recognizing 40 feet as the maximum length of a single log.

(2) Utilization to a diameter of 6 inches in the tops.

(3) Minimum trim allowance of 8 inches.

(4) Rules as to calculation of defect and measurement of diameter.

(5) Designation of the log grade as scaled.

The 40-foot rule had the effect to reduce the volume over the rules practiced by the BIA. Various opinion has been expressed as to what the exact effect is on volume and as a result of a study made at the time, the BIA settled on a volume difference of 12 percent. The other significant results of the scaling change was the development of actual log grade recovery and the utilization of logs to a smaller top diameter. With the ratio adjustment of 1955, prerequisite adjustment was made to the stumpage rates for the 40-foot rule change and this was carried forward in the subsequent evaluations used to determine ratio changes. Subsequent evaluations also introduced log pricing based on the grade recovery experience obtained from the Bureau Scale and other factor changes possible because of the more factual data and market analysis.

III. A. 6. Inadequate Logging Practices

Initial development of the reservation forests had to consider amortization of the costs of access construction to make the timber marketable. Logging in the 1920s was characterized by the use of railroads whose construction costs required large volume of timber per mile of construction. Such was the condition present on the Quinault; access and logging of the timber would bear such costs only by clearcutting as the rail system progressed into the timber areas. The factor of timber sale size combined with clearcutting to make the timber merchantable.

a. Selective Cutting Methods

Emphasis on selective cutting in the Quinault forest came with the regulations of 1936 which derived from the Indian Reorganization Act. Initial application included two patterns: (1) leaving of trees for stream and scenic protection and effect, (2) removal of a minor part of the timber stand with planned return periodically for additional cuts (individual trees selected for cutting). These methods (generally applied to East Side forests of the ponderosa pine region) backed by official policy was proved to be inapplicable to the Quinault Forests due to the blowdown eventually experienced. Whereas, special treatment was desired for stream and scenic values, leave strips and partial overall cuts were not the answer. to the blowdown that would eventually occur. ~~While special treatment is desired in regard to the~~

~~scenic and stream values, it lies in practice other than just application of individual selection tree cutting.~~

b. Staggered Clearcut Blocks

The staggered clearcut falls within the definition of selective cutting. The words selective and selection as applied to timber cutting have been subject to hairsplitting interpretation; and as presently defined, conflict with previous understandings of the words.

The progressive clearcut system evolved to the staggered clearcut block system as the result of several factors, both economic and silvicultural, but was possible by the economic changes of (1) technological advance in the design of road building and log hauling equipment and (2) ratio of product value to cost of production. Another economic effect was that the partial cut allowed quicker progression over the logging unit area and thus opportunity for more allottees to share in the earlier returns from stumpage. The silvicultural aspect considered the fire-break effect of residual green timber blocks and the more positive seed source. From an aesthetic view, the large desolate cutover aspect was dimished.

c. Modification for Salvage Activity

Within a few years after start of logging on the Taholah and Crane Creek Units the economics of utilization were such that

(1) Waste Scale

The material that is waste scaled comes from two basic causes: the material was merchantable by piece standard and should have been taken, or the material resulted from mistreatment of a felled tree. The waste scaler methodically examines the cutover area considering the conditions that prevailed in the uncut stand. Excessive leave of waste is not an acceptable logging performance and the Purchaser may be required to relog an area where excessive waste is encountered. In areas where defect and residue is present in large volume, the waste scale is a difficult and time-consuming task requiring use of insight gained from experience with the logging operation.

small size and pieces of material had indicated demand. All parties were interested in salvaging this material that would otherwise remain ~~unauthorized~~ and modifications of the contracts were completed to provide for the taking of materials for pulpwood, shakeboards, and shingle bolts. The production was made optional to the Purchaser. Production under the salvage modification never reached expectation and has been sporadic.

d: Residues present after logging

The cedar stands are characterized by high residue volume, the result of dead trees and deadfall naturally present and the effect, and slash from logging. Since cedar is more predominate on the Taholah Unit, this is a more extensive problem there. The residue is said to (1) block regeneration, (2) be a fire hazard, and (3) be unpleasing in appearance. However, until the economic solution of removal of the residues arrives, these drawbacks must be borne if the stands are to be logged, nor are they unbearable if the natural processes are allowed to occur and maximum utilization available to the times is exercised. The usual alternative advanced is to burn the residue. Such action requires that provisions for planting the area be available. Usually ignored in the burning alternative is a determination of the damage risk present.

(1) Waste Scale - allowance

(2) ~~(1)~~ Aesthetic Criticism

The logged-over areas of the Crane Creek and Taholah Units present

a poor aspect to the casual observer. The stands, particularly those of cedar, are very decadent and contain high volume of dead standing and down timber. When the area is logged, the slash of the green timber is added to the debris already present although the dead material may be somewhat reduced by the taking of salvageable material.

(3)~~(2)~~ Slash and Residue Treatment

Decision was made early that, with very limited exception, the slash would not be disposed of by burning. Several factors were considered in this decision.

a) The residues contained large amounts of materials currently salvageable or with prospects of salvage attention.

b) Burning of the slash areas would require planting to regenerate the timber stand and the prospect of reforestation funds were not present.

c) The cost of burning, aside from a high risk of timber and property damage, and of planting were not economically sound when natural regeneration could be obtained.

d) The fire risk of the untreated slash did not appear excessive if reasonable cautions were exerted.

e) Residues left on the ground following clearcutting serve a useful purpose in controlling the movement of soil in areas of high rainfall.

f) A study of the U.S. Forest Service indicated hemlock regeneration chances are more favorable when the area is not burned.

c. Stream Treatment

Attention began to be focused on the effect of logging on streams in the early 1960s. The timber contract general regulations provided for the leaving of streamside strips, but this was an aesthetic purpose and past attempts at leave strips had resulted in eventual blowdown of the reserve timber. As a result of the new attention, meetings were held to resolve the problems of logging in relation to the fisheries aspect of the streams. While considerable material was available discussing proper stream treatment, the evolvement of this information into practices satisfactory to all the parties reviewing the stream treatment was slow. Meanwhile, the Taholah and Crane Creek purchasers had proceeded with stream cleanup methods as directed by the Branch of Forestry.

Particular problems associated with the streams are:

a) The timber owner is most concerned with receiving the timber revenue and does not wish to leave several thousand dollars' worth of timber in leave strips on the allotment, and the loss to blowdown risk is high.

b) Many fee patent lands are astride streams and outside the control of the BIA.

c) Streams may have been in poor condition prior to the logging which exposes this condition.

d) The fisheries benefits accrue mainly to the resident population who is generally not the land-timber owner of the timber to be logged.

Differences as to what would constitute proper treatment has been a problem which has been reduced materially with the recent intensive development of logging plans.

III. A. 7. Inadequate Road System and Construction Standards

The Taholah and Crane Creek road system tends to be castigated because there is not a readily identifiable record to show the roads were required to be built in a certain manner. It is recognized that the road construction quality has generally been satisfactory and comparable to logging roads built by other public agencies to log timber. While they do not meet the demand of a public road system they were never required to, nor should they have to meet such standards at the expense of the stumpage.

The road systems required were both extensive and expensive, generally requiring substantial rock fill and the cost is borne by the stumpage owner. The roads were required to bear and sustain a heavy timber volume traffic. In addition they have adequately served other access needs. That they have been able to sustain the timber harvest traffic on a year-around basis in a climate of very heavy rainfall, speaks the quality of the construction. In many cases the roads evolved have a standard higher than what would be reasonable to charge against stumpage.

While detailed road plans were not drafted, the plans for logging the units and the pattern of road progression clearly show the roads did not just happen. The road system layout and the progression of construction is and was generally controlled by the factors of silvicultural treatment, topography and the economics of road cost amortization. In addition effect on the system has been present from the demand that certain allotments be approached to attain earlier income to the timber owners.

It is generally recognized that logging roads are the major source of soil movement and erosion on logging units. On the Quinault roads have also created dam effect in swampy areas and restricted drainage of such areas. Control of these have been considerations of road construction and location, and error and faulty construction experienced has been quite limited. Over the years recognized standards of construction has experienced change and the units roads have not been immune to such change.

7.A. 8. Improper Marking of Allotment Boundaries

The timber contracts generally require the Purchaser to locate and maintain allotment property survey markings. Since the logging is by staggered clearcut blocks which may contain several ownerships, the line running requires location of lines and corners both internal and external to the blocks. These activities are accomplished prior to the logging operations and subsequent to the logging lines are re-identified if salvage operations are expected to occur. Corner locations are maintained and re-established if damaged or destroyed by the logging operation. As the timber is felled and yarded, the Purchaser, based on the line location, marks each log developed from the trees with a predetermined ownership mark. As adjacent settings and blocks are logged, rerun of lines is frequently necessary to tie line location to property corners. The administrative activity of the Bureau Foresters includes verification of these performances by the Purchaser and assistance to the Purchaser where line and corner location problems are encountered.

III. B. Powers of Attorney--Misrepresentation, Undue Influence and Coercion

Critics of the manner in which the Bureau of Indian Affairs presented timber sale proposals and obtained the timber owner consents generally ignore the long series of events starting in the late 1920's and culminating in the long-term Crane Creek and Taholah contracts. They tend to make judgments as to how things should have proceeded by invention of conditions.

The persons with timber ownership involved in the timber for sale were scattered all over the United States. The only practical manner to reach this widespread ownership was by general information circulars. Due to the longstanding debate and interest of allottees as to gaining income from their allotted timber, the Indians had already gained considerable knowledge as to the procedures required in the sale of Indian timber by personal contact with Bureau employees and from general meetings held.

Powers of Attorney Obtained for Crane Creek and Taholah Timber Sales--

The sale of timber on the area north of the Quinault River was a popular demand of the Indian stemming from the allotment of the area following the Payne decision. In 1929 plans were completed to offer the area for sale in four large blocks. One bid was received on each logging unit but the bids were all rejected by the Secretary of the Interior after the sales became the point of extensive criticism. Thus, the allotted owners of the area were acquainted in the 1920's as to the procedures of sale by the Bureau of Indian Affairs. The depression decade followed and intense interest again developed following World War II.

The file period 1945-1949 covers the development of the timber sales north of the Quinault River that are the basis of the subsequent timber harvest and land treatment. The initial proposal of the Taholah Unit was vigorously opposed by the Indians, particularly the Quinault Council, because it did not provide for the sale of everyone's allotment. The second proposal, the North Quinault Unit was not acceptable because of its size. The final proposal, division into four units for sale at the same time was the compromise and decision by the Bureau.

The following points are supported fully by the files.

1. Discussion and proposals for selling the timber north of the Quinault River were extensive and numerous ranging back to the mid-1920's.

2. The large majority, if not entire Indian opinion, was for sale of all the timber and cutover as soon as possible.

3. Bureau policy was to discourage, if not to outright refuse, individuals from making separate sale of their allotted timber of the north area by either their own action or by the Bureau.

4. Industry exerted opposing pressures for large-few sales and for small-many sales.

5. Industry interest in the sales finally advertised was widespread as the sales were being developed.

6. Economic activity in the forest products industry was high in the mid-40's but declined at decade end at the time the sales were presented to the market.

7. Sustained-yield as exemplified by cut of a recurring calculated allowable volume each year had to be compromised to meet the demands of the many owners for more immediate cutover and income.

8. Inquiry and reply as to the sale of timber and the sales finally evolved created a common public knowledge.

The obtaining of the powers of attorney to sell the allotted timber was an extensive effort of years due to the number and heirship of ownership. By the time the reports were completed that were the basis for advertisement of the timber sales, approximately 60 percent of the consents had been obtained and by time of contracting, the percentage was over 90 percent.

The methods of obtaining the allottee consent through the powers of attorney was complex since ownership involved persons scattered all over the United States. The only practical manner to reach the widespread ownership was by general information circulars. Due to the long-standing debate and interest of allottees as to obtaining income from their allotted timber, the Indians had already gained considerable knowledge as to the procedures required in the sale of Indian timber by personal contact with Bureau employees and from general meetings.

Thus, the powers of attorney were acquired principally in the period 1946-1949, and continued into the contract period. Both mail and personal contact were used. The accumulation was initially for the Taholah Unit area but this was expanded to the entire area and sorted to the eventual unit divisions.

Personal testimony - Wilcox, Skarra
Custody of Records - Hoquiam Field Station (Records Center)
Samples attached

U. S. DEPARTMENT OF THE INTERIOR
OFFICE OF THE REGIONAL SOLICITOR
P. O. Box 3621
PORTLAND, OREGON 97208

To: Mr. Marshall   Date 8/15/75

From: Mr. Neely

Subject: Quinault case

Rec'd 8-20-75

CUTTING REQUIREMENTS ISSUE

Plaintiffs' Allegation:

> "The logging contractors were not required to cut timber of inferior quality along with good quality timber, thus increasing the possibility that this lower quality timber will not be cut by the end of the contract." Plaintiffs' More Definite Statement No. 3(d), 12/30/71.

> "Defendant mismanaged the long-term timber contracts on the Taholah and Crane Creek units with resultant damage to plaintiffs by failing to require the loggers to: ... [l]og at a relatively consistent rate throughout each year of the contract, thus allowing the loggers to manipulate their cuttings to the damage of plaintiffs." Plaintiffs' Memorandum of Contentions of Fact and Law No. 12(f), 4/15/74.

Overview of Record

There is very little in the record which will be of much assistance on this issue. The truth on this issue is better found by the proper analysis of the data related to the actual cutting. Following this overview of the record is a suggested graphic method of analyzing and presenting the data. Most of the needed information can be gleaned from scale sheets and stumpage revaluation reports. BIA Forestry personnel should be the ones assigned for this task.

The cutting plans for the Taholah and Crane Creek units were based upon an admittedly conservative estimate of the timber and the decision to have a cutting cycle of 40 years. IIA48.1, IIJ46.1, and IIR50.2. BIA officials recognized that extensions of a contract may be necessary. IIR50.2. IIA48.1. The reasons for the 40-year cutting cycle are found in IIJ46.1. Even though it was recognized that the

periodic annual board foot increment reaches a maximum level between 50 and 60 years, the cutting cycle was set at 40 years because it was felt that to do otherwise would delay the return to allottee owners for an unconscionably long period. IIJ46.1.

It is also apparent that BIA officials were aware that the actual cut on the units was vastly exceeding the original estimates, and that if the contracts were to be completed in time, the maximum annual cuts specified in the contracts would have to be exceeded. IIR50.2, IJ57.5, IJ59.6, IA60.1, IA61.5, VIIIA62.1, and IJ64.7. Consequently, no requests to exceed the maximum allowable cut has ever been denied. IIA62.1, IR55.12, IR56.4, IR57.9-10, IJ60.9-10, and IJ64.7. Since 1964, in effect, there has been no maximum limitation on the cut on the two units. IJ64.7. Once, there was some hesitation in approving a request to exceed the maximum allowable cut since the new stumpage rates ratio had not yet been made effective. This occurred in 1957 on the Crane Creek unit. The request was finally granted when Rayonier agreed to the condition that the additional amount cut would be subject to the higher price. IR57.9-10. The minimum allowable cut was waived on one occasion at the beginning of the Crane Creek contract. IR49.7. There has been much discussion by BIA personnel of raising the minimum allowable cut, but such suggestions have received much objections from the purchasers. See IR51.1, IJ57.5, IR61.10, IJ61.4, and IA61.5.

Although part of the reason the purchasers requested to be allowed to exceed the maximum allowable cut was high log prices, it was not just a question of prices, but also a matter of volume of the

sales and inventories. See IR56.4 and IJ61.4. The question on this issue is basically how much flexibility should the purchaser be given in determining the amount which will be cut on the unit in any given year. There is also some question as to how much the allottees would be damaged by the latitude given to the purchaser since stumpage prices generally follow the trend in log prices and the periods in which the purchaser would be motivated to take out more logs would be the same period in which the allottees would receive a relatively higher stumpage rate. See IR62.8. In the past, the allottees have been in favor of increasing the cuts. VJ59.1. As mentioned earlier, one should be cautioned that prices are not the only factor influencing the volume the purchaser desires to cut. Where the purchaser is using the species of log in his own milling operations, the condition of his inventory may have a greater bearing. See IIJ59.1.

There is some indication that the purchasers have cut in the higher grades. IIR57.3. Rayonier admitted to logging in higher grade cedar areas, but objected to paying a higher stumpage price adjusted to the higher grade percentage because they anticipated cutting in lower grade cedar in the future. IR58.12. Wershing of the BIA also admitted that the cutting on the Crane Creek unit in the early years of the contract was in the high grade areas. VR60.4. It was also suggested that the marginal stands of timber on the units be written out of the contracts. VIIIA62.1. There is no indication, however, that this was ever done.

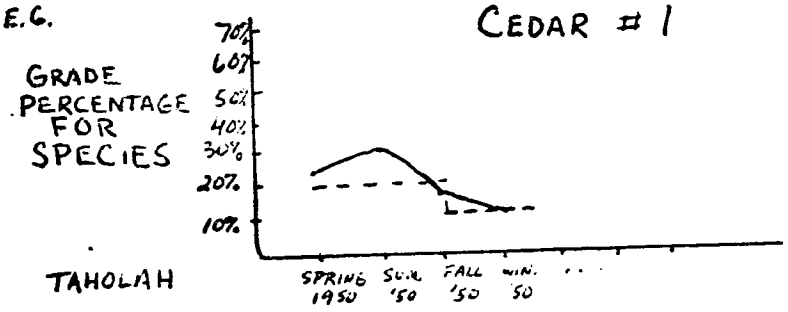
It was contended in 1959 that Rayonier had suspended their logging as a means of manipulating the prices they would have to pay. Investigation, however, found that the suspension was due to bad weather conditions and already adequate inventories. IR59.10. It was also alleged in 1971 that Aloha had closed their operations to wait for the prices to drop. See IJ71.12. The periods in which the purchasers may be deliberately manipulating their logging operations to the detriment of the allottees would be when the stumpage prices were lagging behind the log prices. When this occurs during an upward trend in log prices, an increase in logging operations may indicate such manipulation, and also if during a decreasing trend in log prices logging operations are decreased, such manipulation may be indicated. A critical look at the cutting record on the units as related to the log and stumpage price trends is required before this issue can be determined.

Suggested Graphic Presentation of Data

Graph I

Actual Grade Recovery

E.G.



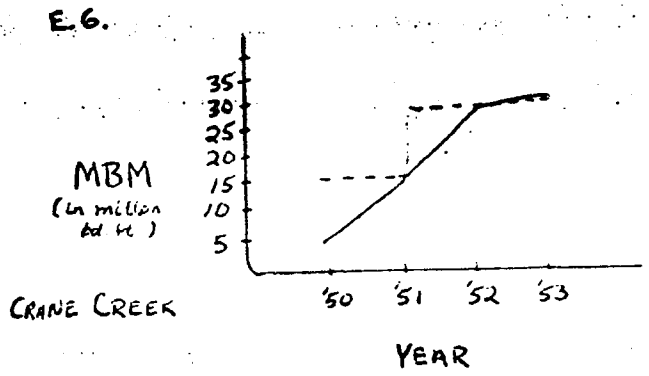
——— - Actual Grade Recovery

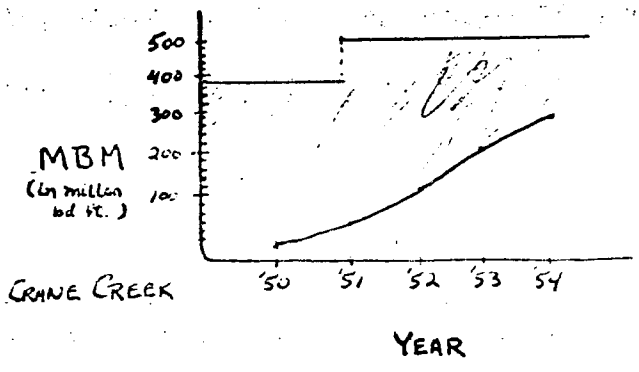
– – – – - Grade Percentage used in Determination of the Stumpage Rate

Graphs II & III

Cut Required to Complete Contract

E.G.





——— - Actual Volume Cut

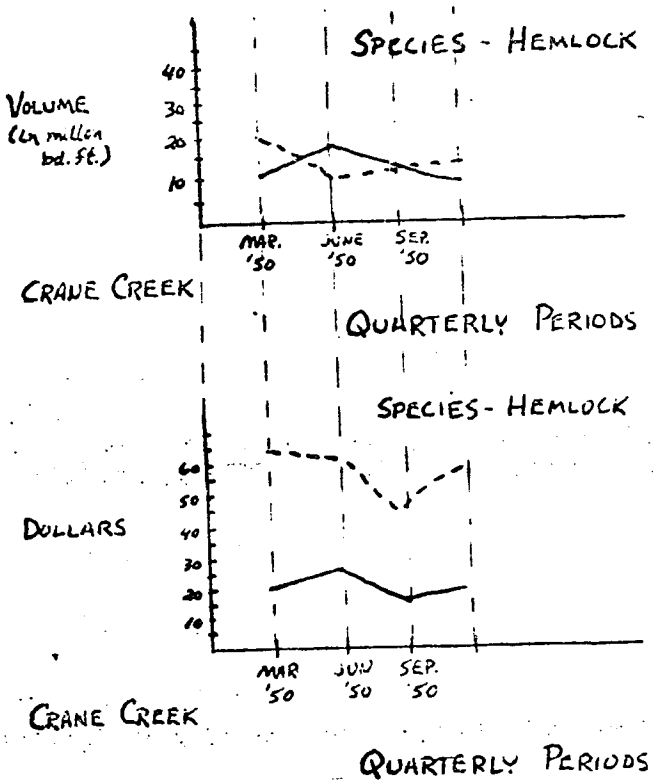
– – – – - Estimated Average Annual Cut Required in Order to Complete Contract on Time.

——— - Cumulative Total [illegible]

▭ - Estimated Total Volume of [illegible]

GRAPH IV

MANIPULATION OF CUTTING



——— - ACTUAL VOLUME SCALED UNDER THE RATES IN EFFECT FOR THAT QUARTER

– – – – - VOLUME ON THE GROUND BUT UNSCALED

——— - STUMPAGE RATE

– – – – – - LOG PRICE

Areas for Further Research

1. The material on the logging plan issue should be looked at in conjunction with this one.

2. Did the 1961 inventory of the units use BIA or PNLA scaling rules? See IJ61.5(a).

3. Did the stumpage rates keep up with the increased log prices during the years when the companies were allowed to exceed the maximum allowable cuts?

4. If the timber stand on the Quinault Reservation was so over-mature, what explains the apparent increment in growth?

5. Were the BIA officials who implemented the rolling average grade recovery procedure, in order to discourage high grading, aware of any specific instances of high grading? See IIJ60.1.

6. In approving logging plans, did BIA officials consider the quality of timber being cut? See Logging Plans Issue; IR64.6, IJ68.4-5 and VA68.3.

7. What are the "Exhibit 4 contentions" referred to in IJ68.4?

8. What was the reason for Aloha's agreement to decrease the maximum allowed cut to 200 million feet for every 3-year period? VJ73.2.

9. Is it possible for the allottees to benefit from the delay in cutting lower grade timber by the possibility that such timber would grow into a higher grade?

10. In 1958 did the BIA, despite Rayonier's objections, go ahead and adjust the grade percentages to make Rayonier pay a higher stumpage price? See IR58.12.

7/22/75

CUTTING REQUIREMENTS - DOCUMENT SUMMARIES

IIA48.1 - Forest officer's report by Forester Carthon Patrie and Forest Manager Perry Skarra, 11/15/48.

- The estimated volume of saw timber on the Taholah unit is 725,000 MBM. The maximum contract period is 29 years and the minimum is 27. The maximum annual cut is 25,000 MBM and the minimum is 25,000 MBM.

- The estimated volume on the Crane Creek unit was 848,000 MBM. The maximum contract period was 34 years and the minimum 30 years. The maximum annual cut was 28,000 MBM; the minimum was 25,000 MBM.

- Due to its wide distribution, cedar reflects the greatest variation in quality, ranging from very good in some parts of the Crane Creek unit and the eastern and central portions of the Taholah unit, to almost worthless cedar in the swamps along the western beaches of the Taholah unit. Hemlock ranges from very good in the Crane Creek unit to very poor along the coast in the Taholah unit.

- Gives a grade distribution for each species on the units.

- On page 22, states that it had been concluded from earlier analyses to shorten the remainder of the first cutting cycle of timber on the reservation to 40 years. In accordance with this recommendation, the contract provided for a cutting period of 30-34 years. It is more likely that the actual cutting period will be closer to 40 years since the volume estimates are conservative and some volume gains will be realized through growth during the contract period.

VA49.1 - Talk by Perry Skarra to Hoquiam Chamber of Commerce, 2/8/49.

- States that a fairly constant production has been maintained on the reservation, but this can no longer be met because of the depletion of the stands in some of the units. Thus, if the annual cut is to be maintained, additional units of timber will have to be sold. Places the annual cut on the reservation as a whole at about 80,000,000 board feet.

- States there may be some fluctuations in the annual cuts for a year or two during the transition period, but after the initial development is started, no violent surges up or down should occur.

IR49.7 -

(a) Letter from Acting Supt. Vincent Keeler to Commissioner of Indian Affairs, 11/15/49.

- Encloses (b), which is a request to be relieved from the cutting requirement. States the contract has not yet been entered into by the corporation. Since it will take several months for the company to submit logging plans, it will probably not be possible to start logging operations until after July 1950. Therefore recommends the company be relieved of cutting requirements for period ending 3/31/50.

(b) Letter from Manager L. J. Forrest of Rayonier, Inc., to Commissioner of Indian Affairs, 11/1/49.

- Requests to be relieved from the cutting requirements.

IIR50.2 - Forest officer's report by Forest Manager John Libby and Forester Earl Wilcox, 11/9/50.

- Table on page 3 shows the original cruise volume for Crane Creek unit at 614,000 MBM. The volume of saw timber expected to be cut is 985,000 MBM. The minimum annual cut is 20,000 MBM, and the maximum cut for a 3-year period is 100,000 MBM. The maximum contract period is 34 years. A table on page 22 indicates that the annual cut on the Taholah unit will be 25,000,000 board feet for 1951 through 1957. For Crane Creek, the table indicates that in 1951 the annual cut will be 12,000,000 board feet and for 1952 through 1957, 25,000,000 board feet. Latest overrun factors indicate that even should the average annual cut on Taholah equal 28,000,000 board feet throughout the life of the contract, an extension of at least 3 years would be required to complete the cutting of timber.

- States it is also possible that such an extension will be required for the Crane Creek unit.

IR51.1 - Memorandum from L. J. Forrest of Rayonier, Inc., to Leroy Arnold of the BIA, 1/4/51.

- Gives suggestions for changes in the contract form. Concerning paragraph 15 which requires a minimum cut of 20,000,000 feet per year and paragraph 16 which limits the cut to a maximum of 100,000,000 feet in a 3-year period, he suggests that the minimum requirements be based on the same 3-year period which is used for the maximum cut. Cites a hypothetical case where the purchaser would reach the maximum allowed cut in 2 years and thus would violate the minimum cut provisions if he

complied with the maximum limitation and vice versa.

VIIIA54.1 - Management plan by Forester Kenneth Hadley, 3/26/54.

- On page 43, discusses the depletion schedule. Anticipates an average of 27,000,000 board feet to be removed from the Taholah unit from 1954 through 1959. During the same period, anticipates 28,000,000 board feet to be removed from Crane Creek.

- Encloses a table showing the record of cut on the Quinault Reservation from 1921 through 1953.

IR55.12 -

(a) Letter from Asst. Commissioner E. J. Utz to Area Director Don Foster, 9/16/55.

- Refers to (b) and (c).

- Grants him authority to act on the company's request without referring it to this office except that he should inform the office of any action he takes.

(b) Letter from Acting Area Director to Commissioner of Indian Affairs, 8/30/55.

- Transmits (c). Recommends that permission be granted to exceed the maximum annual cut specified in the contract by 8,000,000 board feet.

- States it has become increasingly apparent that the Crane Creek unit runs considerably over the original estimate in volume to be cut.

(c) Letter from L. J. Forrest of Rayonier, Inc., to Supt. C. W. Ringey, 8/17/55.

- States that from 4/1/55 to 7/31/55, Rayonier has cut and removed 15,000,000 feet of timber. It is apparent that a reduction in operations

would be necessary in order to keep the allowable cut within the terms of paragraph 16 of the contract unless some relief is granted by the Area Director.

- States for the first 6 months of 1955, demand for cedar has been good and they anticipate this will continue throughout the balance of the year. However, they expect a downward trend in the cedar market beyond that date, and would like to take as much advantage of the present situation as possible. Formally requests that Rayonier be permitted to continue its operations at the present level and be allowed to exceed the specified maximum annual cut by 8,000,000 feet.
- Points out that since operations began in January 1953, the allowable cut has not been reached. In 1953 the cut was 26 M; in 1954, 23,192 M; in 1955, 33,005 M. If relief is granted, the volume for 1956, when added to the previous two years, would produce an average of 33,000,000 feet which is still under the 35,000,000 feet specified in the contract.

IR56.4 -

(a) Letter from Area Director Don Foster to Supt. C. W. Ringey, 3/9/[illegible]

- Refers to (b) and (c).
- States belief that it would be in the best interests of the Indians if Rayonier were allowed to cut an additional 4,000,000 feet during the logging year and therefore grant authority to Rayonier to cut 47,000,000 board feet from Crane Creek during the logging year that will terminate 3/31/56.

(b) Letter from Supt. C. W. Ringey to Area Director Don Foster, 3/2/56.

- Encloses (c).

- States this is in addition to the 8,000,000 board feet authorized by an earlier approval and would mean a total volume in excess of the allowable cut of 12,000,000 board feet.

(c) Letter from L. J. Forrest of Rayonier, Inc., to Supt. C. W. Ringey, 3/1/56.

- States they now find that in order to prevent a shutdown of their operations within Crane Creek, it will be necessary to obtain permission for an additional cut of 4,000,000 feet.

- States that the best interests of the Indian owners would be better served by permitting increased cuts in the years in which a reasonable cedar log market obtains. They anticipate years in which the cedar log market will be depressed, and therefore it follows that the wisest course would be to permit logging of cedar at an accelerated rate when the log market permits such action.

IR57.9 - Letter from Area Director Don Foster to Commissioner of Indian Affairs, 1/30/57.

- The Agency has informed him that Rayonier has requested permission to exceed the maximum allowable cut by 5,000,000 feet during the current logging year.

- States it was originally intended to increase stumpage-to-log price ratios as of 1/1/57, but the proposed effective date was postponed to 4/1/57 in order to allow time for consideration of the report on Federal Timber Sale Policies. Therefore, they hesitate to approve Rayonier's

application for the additional cut. They would, however, be in favor of granting the additional cut with the provision that the stumpage rates shall be those now in effect or those which become effective 4/1, whichever is higher.

IR57.10 - Letter from Acting Area Director to Rayonier, Inc., 2/21/57.

- Refers to letter from Mr. Forrest of 2/11/57 to the Superintendent in which Rayonier agreed to pay for the excess cut at the rates now in effect or to be effective 4/1/57, whichever are greater.
- Grants authorization to Rayonier to cut a total of 40,000,000 board feet during the logging year ending 3/31/57.
- Letter concurred in by L. J. Forrest of Rayonier.

IIR57.3 - Report from L. J. Forrest of Rayonier, Inc., to Supt. C. W. Ringey, 3/15/57.

- On page 7, states suggestions of a change in the character of the Crane Creek logging operations since October 1, 1955, can be drawn only inferentially from the fact that since the inception of the contract Rayonier has produced higher grades of cedar than normally can be expected from the contract area.
- States this is merely a circumstance of the operation and that the entire Crane Creek unit contains no better grade than an average stand of cedar.
- States that by approving in advance the areas within the unit on which Rayonier will commence logging operations, the Government in effect controls the selection of the quality of the stands which Rayonier

logs. Since the inception of the contract, Rayonier's operations have been exclusively in high grade cedar stands.

LJ57.5 -

(a) Letter from Acting Area Director to Supt. C. W. Ringey, 9/11/57.

- Refers to (b), and (c).

- Concurs with Ringey's thinking on the matter and believes that section 1 of the modifications should be deleted.

(b) Letter from Acting Supt. Claude D. Albright to Area Director Don Foster.

- Refers to (c) and (d).

- Libby has consulted with Aloha officials concerning the modification and reports that the company desires to secure the proposed increase in its allowable annual cut but is against an increase in the minimum required. Ringey's position is that an increase in the required minimum is desirable but not essential. It is expected that except during periods of quite adverse market conditions, Aloha will cut well in excess of the minimum required. If permitted to exceed the present maximum, Aloha's average annual cut would be increased sufficiently to complete contract by the expiration date.

(c) Letter from Acting Area Director Perry Skarra to Supt. C. W. Ringey, 2/8/57.

- Refers to (b).

- States belief that the increase in allowable cut is desirable but that the minimum annual cut should also be increased.

(d) Letter from Acting Supt. M. L. Shwartz to Area Director Don Foster, 1/15/57.

- Encloses proposed modification of Taholah contract.

- States the overrun on 9 allotments on which cutting has been completed has been 76%.

IR58.9 - Letter from Acting Area Director to Commissioner of Indian Affairs, 1/28/58.

- Attaches copy of memo of same date to Area Forester from John Libby in response to Office letter of Jan. 22. That letter was partially predicated upon the assumption that there is a deficiency in contractual cutting requirements on the Crane Creek unit. Libby's memo explains there is no such deficiency. Due to the practice of completely falling all the timber on a setting and remarking the allotment lines before skidding, it is unavoidable that there be considerable volumes of felled but unskidded and unscaled logs on the ground. Libby's memo indicated that there has been as great as 19,608,000 feet of felled timber on the ground at a time when stumpage prices were increased. Every reasonable effort is being made to remove this timber by 4/1/58.

IR58.12 - Letter from Asst. Mgr. L. J. Forrest of Rayonier, Inc., to Area Director Don Foster, 4/10/58.

- On page 5, states that circumstances to date have resulted in Rayonier's logging cedar timber having a higher grade than the grade percentages established by the contract. However, future operations will result in an actual grade recovery being lower than the grade percentages established by the contract. It is for this reason that the purchaser in the contract was required to pay the same unit price for both high quality and low quality timber.

IR59.10 -

(a) Letter from Cesar J. Yerkes and Arthur Yerkes to Supt. C. W. Ringey, 1/28/59.

- Formal request to investigate Rayonier's actions on allotments no. 1447 and 1448.

- Alleges that when Rayonier fell and bucked and removed the timber, they only took enough out to cover the advance payments.

(b) Memorandum from Forester Onnie E. Paakkonen to Forest Manager John Libby, 3/10/59.

- States that cutting on allotments 1447 and 1448 started in February and continued through May 1957. Hauling of timber continued through June 1957 when logging operations were suspended. Hauling resumed in March 1958 and ended in May 1958. Hauling from allotment 1448 started in June 1957 and discontinued the same month. Hauling resumed in March 1958 and ended in April 1958.

- Operations were suspended by Rayonier on these allotments because their inventories of pulping species were adequate to supply their plant, and ground conditions did not permit cat logging until early spring and spar tree logging would not have been feasible economically.

IJ59.6 -

(a) Letter from Supt. C. W. Ringey to Area Director Don Foster, [illegible]

- Concurs with Foster that an immediate adjustment of the annual cut of timber on the Taholah unit is desirable.

- States it is clearly evident that at the present rate of cutting, Aloha could not possibly complete the contract on time, even if it should cut

the absolute maximum for the remaining 21 years. Approximately the same situation exists on the Crane Creek unit.

(b) Letter from Asst. Commissioner E. J. Utz to Area Director Don Foster, 1/14/59.

- Refers to request by Paul Smith of Aloha Lumber Company to increase the maximum allowable cut on Taholah unit from 100,000,000 to 120,000,000 board feet for each 3-year period. The company is also willing to increase the minimum annual cut by 10%.
- States there would be no serious objections made to a proposal to modify the contract at this time provided adequate justification is provided.

IR59.12 - Letter from Asst. Area Director Perry Skarra to Rayonier, Inc., 3/20/59.

- Acknowledges receipt of their request of March 17 for an additional 1-1/2 million board feet in addition to the 5 million in excess of the maximum allowable cut already granted.
- Grants their request.

VJ59.1 - Memo by Supt. C. W. Ringey to Area Director Don Foster, [illegible].

- Concerns meeting held on 3/21/59 with Quinault allottees. A question was raised as to whether stumpage should be paid at the rate in effect when it is cut. If the contractor delays logging until a price change goes into effect, should not the timber be paid for at the rate in effect when the timber was cut? Libby stated that under the contract the timber is paid for at the rate in effect when the logs are scaled.

- States the committee appeared to be strongly in favor of the proposed increase in annual cuts for both Crane Creek and Taholah.

IIJ59.1 - Report by Asst. Forest Manager Don Clark to Forest Mgr. John Libby, 3/31/59.

- Regards salvage operations on Taholah unit.

- States Aloha Lumber Corp. is primarily interested in western red cedar. According to the terms of the contract, they must cut all species of timber on the unit. Thus, it appears the company must be allowed reasonable flexibility in the selection and movement from one setting to another in the blocks approved for logging. They must log all the cedar necessary to maintain production at the Aloha and M. R. Smith mills. In order to market the other species which they themselves cannot utilize, they must plan their operations so as to take advantage of favorable market conditions as much as possible. On a very favorable market, they would probably cut heavily in hemlock areas, and on a depressed market, they probably would log only that volume of hemlock necessary to obtain the cedar for their mill requirements.

IJ59.7 - Letter from Acting Supt. Shwartz to Area Director Don Foster, 12/[illegible]

- Refers to Aloha's request to log up to 140,000,000 feet in 3 years on the Taholah unit. The company is now operating on the first year of a 3-year accounting period. Aloha would not object to a small increase in the minimum required annual cut.

- States we know that there will be a much greater volume on the unit than is stipulated in the contract. There is no question that the annual

rate of cutting will have to be greatly increased if the contract is to be completed by 1979.

- Recommends approving the request, and in the meantime completing the inventory of the Taholah unit so that at the time of the end of the accounting period, they will be in a position to recommend a contract modification to establish new cutting limitations.

LJ60.8 - Letter from the Commissioner of Indian Affairs to Area Director Don Foster, 2/5/60.

- Refers to IJ59.7 and the attached letter from the Area Director dated 12/23/59. As to the modification of the contract to increase the minimum annual cut, suggests that no particular advantage would be gained in increasing the minimum allowable cut by the small amount proposed at this time.

- States the purchaser should be reminded that it is doubtful that any appreciable extension of time will be granted to complete the contract if all the timber is not cut at expiration date. He has an obligation to cooperate in arranging his cutting schedules so that the cutting will essentially be completed by the time the contract expires. In the meantime, the Office agrees to increasing the maximum allowable cut to 140,000,000 board feet for the 3-year period requested. This is not inconsistent with the Crane Creek modifications. In that case the request was for the maximum annual cut to be increased for the duration of the contract. Also, there is no reasonable assurance that a new inventory would be completed in the near future. Therefore, we were opposed to an increase in the maximum allowable cut unless the contract

modification to increase both the minimum and maximum provisions was accomplished.

LJ60.9 - Letter from Supt. C. W. Ringey to Area Director Don Foster, 2/9/60.

- Refers to the recent modification of the Crane Creek contract, providing for an increase in the maximum allowable cut to 50,000,000 board feet. The recent inventory indicates that at least 60,000,000 feet must be removed per year if the contract is to be completed by its expiration date. Although they have not yet inventoried the Taholah unit, they know that the present rate of cutting will never remove the merchantable timber before the contract expires in 1979. They believe it is inadvisable to wait any longer before making a substantial increase in the maximum allowable cut under the Taholah contract. If they wait until the inventory of the Taholah unit is made, the time remaining over which to spread such cut will be only about 17 years. They anticipate that the present rate of production will have to be at least doubled if the contract is to be completed on time.

- Suggests a modification in the contracts to remove any maximum cutting limitations with such increase in the minimum required cut as the [illegible] can be prevailed upon to accept. They anticipate strenuous objections from the allotment owners if it is proposed to extend the expiration date of either contract.

IR60.4 - Letter from Asst. Area Director Perry Skarra to Rayonier, Inc., 2/1

- Authorizes Rayonier to cut 5,000,000 board feet in excess of the maximum allowable annual cut of 50,000,000 board feet for the period ending 3/31/

IA60.1 - Memorandum from Foresters John P. Drummond and Lynn E. Hatch, to Area Forester, 3/22/60.

- Regards preparation of necessary supplements to the manual for new timber contract forms and the standard timber contract provisions.

- States that timber survey by Art Woll of Crane Creek unit indicates that it contains about three times the volume of timber as originally advertised for sale. In order for timber to be cut within the contract period, the purchaser will have to cut an average of 60,000,000 board feet per year.

IJ60.10 -

(a) Letter from Commissioner Glenn F. Emmond to Area Director Don Foster, 4/18/60.

- Approves requested increase to 150,000,000 board feet of the allowable maximum cut on the Taholah unit.

(b) Letter from Acting Supt. to Area Director Don Foster, 3/8/60.

- Urgently recommends that the maximum allowable cut requested by Paul R. Smith of Aloha Lumber Corp. be authorized.

(c) Letter from President Paul R. Smith of Aloha Lumber Company to Area Director, 3/4/60.

- Amends previous request in December 1959 and now requests that the maximum allowable cut provision in the Taholah contract be removed, and if this is not feasible, requests that the cut be raised to 150,000,000 board feet for each 3-year period.

- States they have had to buy logs to keep their sawmill operating.

IR60.5 -

(a) Nothing relevant.

(b) Letter from Acting Supt. to Area Director Don Foster, 4/21/60.

- Refers to Rayonier, Inc.'s request of April 12 that the maximum allowable cut be increased from 50,000,000 to 65,000,000 board feet for the year ending 3/31/61.
- States they have been informed that Rayonier has secured commitments for a relatively large volume of cedar on Grays Harbor for the year 1960.
- Believes that Rayonier should be allowed to take advantage of an existing opportunity to dispose of a large volume of cedar timber.
- Recommends approval of Rayonier's cutting plan as modified and further recommends approval of the requested increase in maximum cut.

(c) Letter from Manager L. J. Forrest of Rayonier, Inc., to Supt. C. W. Ringey, 3/12/60.

- Requests to increase the maximum cut to 65,000,000 feet for fiscal year 1960.

IIJ60.1 - Stumpage revaluation report by Asst. Forest Mgr. Don Clark and Forest Mgr. John Libby, 5/17/60.

- This regards the Taholah unit.
- On page 9, during the discussion of the grade recovery feature, states that the [illegible] would be to base the log grade percentages on the average grade recovery for the last 3 logging years immediately preceding the study. This procedure would currently reflect the quality of timber being logged and tend to discourage so-called "high-grading" on the part of the purchaser.

VR60.4 - Memorandum by Asst. Chief of Branch of Forestry Henry F. Wershing and Chief of Branch of Forestry George S. Kephart, 6/29/60.

- Regards consultations held on 6/23/60 with representatives of Rayonier, Inc.

- On page 4, states on a contract extending over a long period of time, if cutting is not strictly controlled there can be considerable variation in the quality of timber cut from year to year. In the earlier years of the Crane Creek contract, the purchaser was allowed to cut in the better portions of the unit. It is now expected that good and poor quality timber will be properly proportioned for each of the cutting years. By proper proportion of good and poor cutting blocks, the quality should not vary greatly.

IA60.4 - Letter from Chief of Branch of Forestry George S. Kephart to Area Director Don Foster, 12/15/60.

- Regards the volume of timber per acre required before an operation is profitable. In some areas, although they contain merchantable trees, the volume per acre is so low that it is impractical to require the purchaser to log them. The consensus among the BIA Forestry engineers to be, for the type of timber involved, that the minimum volume per acre which logging should be required is about 10,000 board feet.

- Refers to experience in the early 1950's in the U. S. Forest Service Olympic Forest where stands of Douglas fir containing as little as 4,000 board feet could be operated profitably.

- Suggests that such a study may be useful in deriving a minimum volume per acre for the Quinault Reservation. The publication was by John Carow, Pacific Northwest Forest and Range Experiment Station, Research Paper No. 32 (1959).

IR61.10 -

(a) Letter from Manager L. J. Forrest of Rayonier, Inc., to Supt. C. W. Ringey, 3/24/61.

- Refers to (c). States Rayonier does not favorably consider an increase in the minimum cut because of the penalties which may apply under extreme adverse market conditions. However, they have no objection to the removing of the maximum allowable cut in the contract.

(b) Letter from Manager L. J. Forrest of Rayonier, Inc., to Supt. C. W. Ringey, 3/8/61.

- Refers to (c). States they would be glad to discuss the matter, but fail to see how such a modification would increase the annual cut from the unit.

(c) Letter from Acting Supt. W. J. DeCelle to Manager L. J. Forrest of Rayonier, Inc., 3/7/61.

- Recent inventory of Crane Creek indicates that a substantial increase in the annual cut will have to be maintained if the contract is to be completed on time. Asks them to consider a modification increasing the minimum cutting requirement by 50% and removal of all the maximum limitations.

IJ61.4 -

(a) Letter from Acting Asst. Commissioner George Kephart to [illegible].

- Refers to (b) and (e). States that the minimum cutting requirement could be set at 20,000,000 feet in any year except that a cut of not less than 125,000,000 board feet would be required in each stipulated 5-year period. Under such circumstances, the purchaser might be willing

to increase the minimum cut to a higher rate.

(b) Letter from Acting Area Director Perry Skarra to Commissioner of Indian Affairs, 6/28/61.

- Regards modification of the Taholah contract to remove the maximum cutting limitations. Refers to their suggestion of the possibility of allowing the minimum cut to cover a period of years rather than a single year in order to provide opportunity to the purchaser for maneuverability to offset bad years.

- Concurs with (d).

- States that Mr. Paul Smith of Aloha Lumber Company has expressed unwillingness to consider increasing the minimum cut to a higher volume than 25,000,000 board feet per year.

(c) Letter from Asst. Forest Mgr. Don Clark to Forest Mgr. John Libby, 6/2/61.

- Gives a summary of the inventoried volumes by species on the Taholah unit.

- Shows a net volume of merchantable timber of about 1 billion board feet. The company would have to log approximately 69 million board feet annually to complete the cutting requirements for the remaining 18 years on the contract.

(d) Letter from Acting Supt. W. J. DeCelle to Area Director R. D. Holtz, 5/24/61.

- States it is evident that the annual cut on the Taholah unit will [illegible] to average more than 50 million board feet if the contract is to be completed on time. The same situation exists on the Crane Creek contract. It would be desirable to increase the required minimum annual cut to 40 million feet or more, but there appears to be little chance that

either Aloha or Rayonier will agree to such an increase. Propose that the contract be modified to provide for the highest minimum annual cut which they can get the purchaser to accept and that the limitation on the maximum allowable cut be removed.

(e) Letter from Asst. Commissioner E. J. Utz to Acting Area Director Perry Skarra, 4/26/61.

- States they agree that it would be desirable to remove the maximum cutting restrictions, but points out that the 25 million feet minimum does not provide a guarantee that the timber would be cut on time. Therefore suggests it may be desirable to consider a minimum cut covering a period of years rather than on an annual basis, which would come more closely to meeting the requirements of the contract.

(f) Letter from Supt. C. W. Ringey to Area Director Don Foster, 3/31/61.

- States the annual cut will have to average at least 50 million board feet is the contract is to be completed on time. Recognizes there are valid arguments against permitting too much leeway between maximum allowable and minimum required cuts. If the cutting limitations under the contract are not increased materially, the purchaser cannot possibly remove the timber in time. It is not just a question of log and lumber prices. It is a matter of volumes of sales and excess inventories. The operators need to be in a position to produce cedar without limit when the market will absorb it to obtain the loan years when the species becomes a [illegible] on the market.

LJ61.5 -

(a) Letter from Acting Area Director to Supt. C. W. Ringey, 11/24/61.

- Refers to (b). Points out that the remaining volumes indicated in (b) are based on 32' logs. The actual cut to be expected on the basis of PNLA grading and scaling rules may be approximately 10% less than the volume shown.

- Of the three alternatives in (b), only the third appears to have merit. Requests their views.

(b) Letter from Asst. Commissioner E. Reeseman Fryer to Area Director Robert D. Holtz, 11/17/61.

- States the recently completed inventory indicates the volume on the units is about 2.5 times the original estimates. The Crane Creek contract provides a maximum cut of 35 million board feet each year. During the first 5 contract years, the purchaser cut an average of 34,700,000 board feet annually. In order to cut the remaining volume within the 28 years left on the contract, the average annual rate will have to be increased to about 47 million board feet.

- Foresees three administrative alternatives:

(1) the present minimum and maximum cutting provisions could be continued and the life of the contract extended to permit cutting of all available timber, regardless of volume;

(2) the minimum and maximum cutting requirements could remain unchanged and enforced, and the contract terminated on the expiration date, even if there remains timber available for cutting; and

(3) the purchaser could be required to complete cutting of all available timber regardless of volume by the present expiration date.

- Before approaching purchasers or the Indians, answers to at least two legal questions are needed:

(1) is the purchaser obligated to cut all timber within the contract area regardless of the total volumes, and, conversely, is the seller obligated to permit the cutting of all such timber?

(2) if the cutting and selling obligations are governed by the actual volumes of timber rather than the original estimates, what are the obligations in respect to the period of time provided for cutting? Would the approving officer be obligated to grant a reasonable extension of time?

- Similar questions were raised with the Twin Lakes logging unit contract on the Colville Reservation, which appeal is pending in the Solicitor's Office.

IA61.5 -

(a) Letter from Acting Area Director H. L. Moore to Commissioner of Indian Affairs, 12/27/61.

- Refers to IJ61.5(b). States the third alternative expressed in that letter appears to be most desirable.

(b) Letter from Supt. C. W. Ringey to Area Director R. D. Holtz, 12/18/61

- Refers to IJ61.5. The most desirable solution would be a modification of the contract to increase the required minimum cut to a volume that would assure completion of the contracts by their expiration dates. This need not be on an annual basis, but could be for specified periods of years. The maximum limits would be removed. It is not believed that either Rayonier or Aloha will consider substantial increases in the minimum

required cuts. As to the first alternative, they agree it is not desirable. The allotment owners involved would strenuously object to any extensions. Perhaps the contracts could legally be extended without the allottees' consent, but this would not be desirable. The second alternative would leave many of the allotment owners unpaid for their timber when the contracts expire. Time would be required to re-inventory the remaining timber and arrange for its sale. Thus, the final harvest would probably not be accomplished any sooner than under the first alternative.

- The third alternative appears to be the most desirable of the three. There would be some chance that the timber could be cut and removed by the expiration dates. By removing the maximum limitation, it would at least make completion physically possible.

- Suggests another alternative whereby areas classed as small merchantable may be removed from the contract by mutual consent of the owners and the contractors and thereby reduce the timber remaining to a volume that can be cut out within the existing contract limitations. A considerable portion of the small merchantable areas probably could not be logged profitably under the contract.

- One other alternative is acquisition by the United States of the allotments under the contracts with full payment now to the allottees. It would then be possible to continue the administration of the contracts with modifications as may be desirable, including necessary extensions to permit the orderly and economical harvest of the timber. This alternative would require congressional action.

- States even if the purchasers will accept no increase in the minimum, they would still recommend removal of the maximum limitations.

VIIIA62.1 - Plan by Forest Manager John Libby, 4/10/62.

- This is a proposed program of action for the Taholah and Crane Creek units.

- On page 7, states that production from each unit will have to average about 50 million board feet annually if the contracts are to be completed on time. Even if the maximum cutting limits were removed, it is doubtful that the purchasers can complete logging by the expiration dates since present available markets cannot be expected to absorb this much production. There are also substantial areas of marginal stands of very low grade cedar. On the Taholah unit, 4,088 acres are classified as Small Merchantable; 2,615 as Nonmerchantable; and 83 acres as Small Hemlock. On Crane Creek, 5,452 acres are classified as Small Merchantable; 2,997 as Nonmerchantable; and 2,621 as Pole-size Hemlock. Consideration is now being given to modifying the contracts to revise merchantability standards to make this marginal timber at a stumpage price that will make its harvest economically feasible. Unless the modification is accomplished, it will be difficult to justify requiring contractors to log some of these areas. In many instances the recoverable volume to be recovered would not pay for the roads required to reach it. It can be anticipated that the contractors will contend that such stands are nonmerchantable and that they cannot be required to log them.

IR62.8 -

(a) Letter from Acting Commissioner John Crow to Area Director Robert D. Holtz, 7/25/62.

- Refers to (c). States the over-cut on the Crane Creek unit of 2,760,180 board feet is an infraction of the contract provisions. For the reasons pointed out in (c), it is evident that the particular circumstances of the over-cut do not warrant action against the purchaser, and thus suggests that the Area Director consent to the over-cut.

(b) Letter from Supt. George Felshaw to Rayonier, Inc., 7/24/62.

- Informs them that they exceeded their authorized cut under the Crane Creek contract for the logging unit ended March 31, 1962.

- Suggests that authority for any desired increase in the allowable cut be requested at the earliest date possible.

(c) Letter from Area Director R. D. Holtz to Commissioner of Indian Affairs, 7/10/62.

- Reports the over-cut on the Crane Creek unit.

- Recommends that no further action be taken because: (1) the contract provides no penalty in the event of an over-cut; (2) the Indians received more money for their timber at prices in effect during the 1st quarter than they would have received had it been cut during the 2d quarter; (3) it would be difficult, if not impossible, to decide which Indians the money should go; (4) had Rayonier requested a greater increase in the maximum allowable cut, there would have been no hesitation in approving it.

(d) Letter from Supt. George Felshaw to Area Director R. D. Holtz, 7/3/62.

- Reports the over-cut on the Crane Creek unit.

- States that because of differences in stumpage rates between the 1st and 2d quarters of 1962, the allottees received greater value on the timber over-cut than they would have received if the timber had been removed in the subsequent logging year.

IIA62.1 -

(a) Letter from Deputy Commissioner John Crow to Area Director Robert O. Holtz, 12/14/62.

- Suggests that if they still believe the maximum cutting restriction should be removed without a change in minimum cutting requirements, to submit a justification.

- Disagrees with Wilcox that continuation of the present situation would jeopardize the ability to require cutting of all merchantable timber during the specified period. The record shows that no request to exceed the maximum cut has ever been denied, and though the arrangement is awkward, it is not so restrictive as to prevent the purchaser from completing his contract obligations. Only if we denied a request to exceed the maximum would we be obstructing the purchaser in his efforts to complete the contract on time.

(b) Memo by Area Forester Earl Wilcox, 10/15/62.

- Reports on a field trip to the Western Washington Agency.

- Discusses recommendation to remove the maximum limits on the cutting requirements. States the contractual provisions would actually prevent

the operator from completing the cutting on the contract unless he were repeatedly requesting permission to exceed the maximum limits.

IR64.3 - Letter from Acting Area Director Perry Skarra to Supt. George Pelshaw, 1/21/64.

- Refers to Rayonier's request that the maximum allowable annual cut be increased from 50 million board feet to 65 million board feet for the logging year ending 3/31/64.

- Authorizes the requested increase for Rayonier.

IR64.4 - Letter from Chief of Branch of Forestry George S. Kephart to Commissioner of Indian Affairs, 9/24/64.

- States as of 1/1/60 the purchaser on the Crane Creek unit had cut 251 million board feet, or an average of more than 30 million feet per year for the 8 years of the contract. It is now known that the actual volume to be cut approaches three times the original estimate. An inventory indicates that an average minimum annual cut of 58 million board feet will be required to finish the contract on time. This makes the stipulated maximum of 35 million feet unrealistic.

- Implies that extensions of time for the completion of the contract would not be considered favorably.

IJ64.6 - (a) Letter from Acting Supt. to Area Director R. D. Holtz, 9/25/64.

- Recommends approval of Aloha's request for an increase in the maximum allowable cut on the Taholah unit from 100 million to 175 million board feet for the 3-year period from 4/1/62 to 3/31/65.

(b) Letter from President Paul R. Smith of the Aloha Lumber Corp. to Supt. George Felshaw, 9/21/64.

- Requests the increase in the maximum allowable cut referred to in (a).

IR64.6 - Memo from Asst. Area Forester Kenneth W. Hadley to Area Director, 9/28/64.

- Reports on meeting with Rayonier officials on September 24.

- On page 3, states Rayonier officials suggested that consideration be given to fixing the estimated log grade and species mix on the remaining timber to be cut. The estimates of BIA and the company differ. It is also probable that BIA would have to exercise more control over the selection of areas to be logged to be assured that high-grading is not practiced.

LJ64.7 -

(a) Letter from Deputy Commissioner John Crowe to Area Director Robert D. Holtz, 10/2/64.

- Concerns the maximum allowable cut on the Crane Creek contract.

- States that an inventory indicates that the minimum cut of nearly 60 million board feet per year would be required to complete the contract on time.

- Suggests that a simpler procedure would be to address a letter to the purchaser informing him that, pursuant to section 16 of the contract, he is authorized to cut any amount in excess of 35 million board feet in any contract logging year until such authorization is revoked in writing by the Area Director.

(b) Letter from Asst. Area Director Perry Skarra to Commissioner of Indian Affairs, 10/15/64.

- Refers to (a) and agrees with the suggestion.

- States that by letter dated October 8, 1964, they so authorized Rayonier.

- Recommends that the Commissioner authorize the Aloha Lumber Corp. to cut any amount in excess of 100 million feet board measure in each 3-year period until such authorization is revoked in writing by the Commissioner.

(c) Letter from Deputy Commissioner John Crowe to President Paul R. Smith of Aloha Lumber Corp., 11/13/64.

- Pursuant to section 16 of the contract, authorizes them to cut a maximum of 300 million board feet in any remaining 3-year period. The authority will continue until revoked in writing by the Commissioner.

IJ68.4 - Letter from Deputy Commissioner T. W. Taylor to President James Jackson of the Quinault Tribal Council, 3/12/68.

- Refers to meeting on 2/21/68 with tribal officials. In regard to their suggestion that the Bureau strengthen its control over selection of areas to be cut on the Taholah unit, which is emphasized by the effect which log grade mix has had on average stumpage price, states that this is one of the points which was stressed in Aloha's appeal of the 1/1/66 prices.

- A penciled note on the side of the letter refers to "Exhibit 4 contentions."

IJ68.5 - Letter from Asst. Area Director A. W. Galbraith to Supt. George Felshaw, 3/22/68.

- States there has been some concern that the value difference between the rates applied by the Secretary to the volumes between 1/1/66 through 12/31/67 and the payments collected in the same period at the rates established by the Commissioner may have been the result of calculated decisions as to the volume of species and quality of timber stands to be cut. The following changes appear in the examination of timber cutting records. They largely account for the value difference.

(1) Volume of cedar in 1967 was 69% as compared to the cumulative average of 62%. Hemlock volume decreased.

(2) The percent of No. 3 cedar logs is double the cumulative average.

(3) The percent of No. 3 hemlock logs in 1967 is approximately 40% over the cumulative average.

(4) White fir grade is generally lower in 1967 with No. 3 logs approximately double the cumulative average.

- Requests that more information on this situation be developed.

VA68.3 - Memo from Area Forester Kenneth Hadley to Asst. Area Director for Economic Development, 11/13/68.

- Concerns consultation with Quinault tribal representatives on [illegible]

- Tribal representatives expressed the view that the purchasers have too much control over areas selected for logging, with effect on average stumpage prices.

IIA68.10 - Summary tables for special study of Indian forestry program, 1968.

- On pages 32 through 37, appears a discussion on allowable cut for Indian lands. Refers to an Office report by Earl Wilcox, April 1968.

- States if one is willing to accept the concept of an even flow of cubic content, it is possible to justify an annual cut of approximately 3% of the total board foot volume of growing stock in the predominantly over-mature forests of the western pine region. The justification for higher allowable cuts which are possible under the concept of growing timber for cubic contents carries an implied requirement for the lands to be managed more intensively than in the past. During the first cutting cycle, the harvest of an over-mature, uneven-aged forest should proceed at the accelerated rate justified by the cubic concept even when timber stand improvement and reforestation measures are not being carried out concurrently. This is because the harvest will provide much of the stand release.

- Gives a tabulation showing the tentative minimum allowable cuts that may be justified on the basis of growing timber for its future cubic content rather than for maximizing board foot Scribner production of logs. For the Quinault Reservation, indicates an allowable cut of 180 million board feet.

IJ71.12 -

(a) Letter from Chairman James Jackson of the Quinault Tribal Council to Supt. George Felshaw, 4/29/71.

- States Council's position that there is a large volume of felled and bucked timber and culled decked timber in the Taholah unit and that

Aloha Lumber Corp. has closed operations to wait for the price to drop before they will remove the timber. Thus, the Tribal Council does not accept a stumpage revision until removal of the said timber.

(b) Letter from President James Jackson of the Quinault Tribe to Supt. George Felshaw, 5/6/71.

- Refers to Aloha's stopping operations on the Taholah unit.
- States that as far as they are aware, no consent, written or otherwise, was obtained by Aloha of the officer in charge for the cessation of logging operations.
- Requests that Aloha be instructed to resume operations on the designated cutting blocks at the prevailing stumpage rate immediately.

(c) Letter from Supt. George Felshaw to President James Jackson of the Quinault Business Committee, 5/27/71.

- Refers to (d), and states they have not received any response from Aloha.

(d) Letter from Acting Supt. Paul H. Clements to Palmer Parker of Aloha Lumber Corp., 5/11/71.

- Refers to section 9 of the General Timber Sale Regulations portion of the Taholah contract.
- Requests that logging operations be resumed in order to prevent deterioration.

IJ71.41 - Letter from Chairman Helen Mitchell of the Quinault Allottees Committee, 5/22/71.

- Accuses Aloha of manipulating logging to higher grade areas during the months of June and July.

LJ71.34 - Letter from Vice-President, Quinault Tribe, and Chairman of the Allottees Committee Helen Mitchell to Commissioner of Indian Affairs Lewis Bruce, 10/25/71.

- Refers to recent closure of Aloha Lumber Corp. operation on the Taholah unit.

- Asserts that the logging unit has been high-graded.

IA72.2 -

(a) Nothing of relevance to this topic.

(b) Letter from Acting Area Director A. W. Galbraith to Commissioner of Indian Affairs, 3/21/72.

- Among the actions suggested for consideration is the desirability to reduce the annual rate of cutting on the reservation as a means of obtaining more orderly development of the forest property as an integrated unit.

LJ73.10 - Letter from Peter H. Koehler of Evans Products Co. to Kenneth Hadley, 2/20/73.

- Aloha's statement of position as to the rate of cut is that the maximum cut rate could be lowered to approximately 200 million feet over a 3-year period. Below this figure could jeopardize their ability to produce enough wood to sustain their conversion facilities and their ability to cut the available timber according to the contract prior to its termination date.

VJ73.2 - Memo from Asst. Area Director for Economic Development Doyce L. Waldrip to Asst. to the Secretary for Indian Affairs, 3/1/73.

- Regards consultation on revision of stumpage rates for Taholah unit

with representatives from Evans Products and the Quinault Indians on 2/12/73.

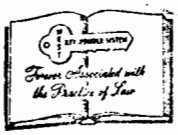
- States Aloha appears to have no objection to lowering of the maximum cutting volume to a level in line with recent cutting history, that is, 200 million board feet per 3-year period. However, they are not prepared at the time to make recommendations as to a change in the maximum allowable annual cut. Whereas the Briegleb report recommends such a consideration, there are arguments for the cut to continue at a high level as well.
- Will submit recommendations later after obtaining more opinions.

VR73.1 - Memo from Asst. Area Director for Economic Development Doyce L. Waldrip to Asst. Secretary of the Interior for Management and Budget, 3/1/73.

- Regards consultation on revised stumpage rates for Crane Creek unit with representatives from Rayonier and the Quinault Indians on 2/13/73.
- States that in regard to the maximum cutting volume Rayonier would be opposed to a restrictive change.
- Will make recommendations later after more opinions are obtained.

FEDERAL REPORTER

Second Series



Volume 485 F.2d

Cases Argued and Determined
in the

UNITED STATES COURTS OF APPEALS

UNITED STATES COURT OF CLAIMS

UNITED STATES COURT OF CUSTOMS
AND PATENT APPEALS

AND

TEMPORARY EMERGENCY COURT OF APPEALS

ST. PAUL, MINN.

WEST PUBLISHING CO.

1974

202 Ct. Cl. 625

The QUINAULT ALLOTTEE ASSOCIATION and Individual Allottees Jennie Boome et al.,

v.

The UNITED STATES.

No. 102-71.

United States Court of Claims.

Oct. 17, 1973.

Class action by owners of interests in Indian land trust allotments on the Quinault reservation in the state of Washington to recover administrative charges which Government had deducted from proceeds of sales of timber from individual Indian allotments on the reservation. On motion for summary judgment and plaintiffs' cross-motion for partial summary judgment, the Court of Claims, Bennett, J., held that the charges were authorized by law, were validly assessed by United States and violated no treaty, contract or fiduciary duty.

Defendant's motion granted, plaintiffs' cross motion denied and petition dismissed.

1. Indians ⇐17

The General Allotment Act of 1887 did not preclude the Government from deducting administrative charges from the proceeds of timber sales from the Indian land trust allotments on the Quinault reservation in the state of Washington; the Government had express statutory authority to assess such charges. U.S.C.A.Const. Amend. 5; Treaty of Olympia, Jan. 25, 1856, 12 Stat. 971; Indian General Allotment Act, §§ 1, 5, 25 U.S.C.A. §§ 331, 348; Indian Reorganization Act, § 2, 25 U.S.C.A. § 462; Act June 21, 1906, 34 Stat. 326.

2. Indians ⇐13(1)

The purpose of the General Allotment Act of 1887 was to lay foundation for integrating Indians into the mainstream of American society. Indian General Allotment Act, § 1, 25 U.S.C.A. § 331.

3. Indians ⇐13(1)

The General Allotment Act of 1887 does not prohibit reasonable administrative charges against the proceeds from allotted Indian land while held in trust and administered by the United States. Indian General Allotment Act, § 1, 25 U.S.C.A. § 331.

4. Indians ⇐5

Indians not fully emancipated from the control and protection of the United States are subject to its legislation. Indian Reorganization Act, § 2, 25 U.S.C.A. § 462.

5. Indians ⇐17

Administrative charges for management of timber sales on the Quinault reservation arose from the operation of the trust but did not run against the titles or cloud them in any way as unpaid tax would. Indian General Allotment Act, §§ 1, 5, 25 U.S.C.A. §§ 331, 348.

6. Indians ⇐17

Administrative charges in connection with sales of timber from the Quinault reservation are deducted when the timber is sold and do not encumber the fee of the individual allotment or constitute a possible lien on the fee. Indian General Allotment Act, §§ 1, 5, 25 U.S.C.A. §§ 331, 348.

7. Indians ⇐17

Administrative charges deducted from proceeds of sales of timber from allotments in the Quinault reservation did not constitute a tax so as to fall within the tax exemption afforded by the General Allotment Act of 1887. Treaty of Olympia, Jan. 25, 1856, 12 Stat. 971; Indian General Allotment Act, §§ 1, 5, 6, 25 U.S.C.A. §§ 331, 348, 349.

8. Indians ⇐15(1)

The practice of deducting reasonable charges to help cover the costs of selling tribal lands, buildings, collection of rents and royalties, administering Indian moneys, appraising timber and certain activities for benefit of the Indians

is proper in certain circumstances. Indian General Allotment Act, § 1, 25 U.S.C.A. § 331; Indian Reorganization Act, § 2, 25 U.S.C.A. § 462.

Charles A. Hobbs, Washington, D. C., attorney of record, for plaintiffs; Wilkinson, Cragun & Barker, and R. Anthony Rogers, Washington, D. C., of counsel.

Herbert Pittle, Washington, D. C., with whom was Asst. Atty. Gen. Kent Frizzell, for defendant.

Before COWEN, Chief Judge, DURFEE, Senior Judge, and DAVIS, SKELTON, NICHOLS, KUNZIG and BENNETT, Judges.

ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND PLAINTIFFS' CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT

BENNETT, Judge:

The individual members of the class [1] of plaintiffs are owners of interests in Indian land trust allotments on the Quinault Reservation in the State of Washington. The lands are on the Pacific Coast side of the Olympic Peninsula. Plaintiffs contend that the United States, in deducting administrative charges from the proceeds of timber sales on the various allotments, interfered with their vested right not to be subject to any charges assessed on the trust allotments. Plaintiffs seek to recover the total of such charges collected since 1922, the amount to be determined later, together with interest, on alternative theories of a Fifth Amendment taking, a breach of fiduciary duty, and a breach of contract.[2] Plaintiffs invoke our general jurisdiction under 28 U.S.C. § 1491. The court concludes, however, that plaintiffs' action must be dismissed since the charges in question were authorized by law, were validly assessed by the United States and violated no treaty, contract or fiduciary duty.[3]

It was the avowed policy of the United States in the mid-1800's to remove Indian tribes from wide areas of the Pacific Northwest in order to make way for white settlers. Pursuant to this policy, in 1855, Isaac Stevens, Governor and Superintendent of Indian Affairs of the Washington Territory, began negotiations with the fish-eating tribes living on the west coast of the Territory.[4]

1. In its prior consideration of this case, Quinault Allottee Ass'n v. United States, 453 F.2d 1272, 197 Ct.Cl. 134 (1972), this court found that all the elements necessary to prosecute a federal "class action" were present. 453 F.2d at 1276, 197 Ct.Cl. at 140–141; F.R.Civ.P. Rule 23. The court agreed to notify other potential plaintiffs of the pendency of this action and to permit them to become members of the class prosecuting the action if they so desired. Unlike the situation in an F.R.Civ.P. 23 class action, however, the court determined that it was not necessary or appropriate to bind allottees who failed to join this suit. Since the January 21, 1972 decision, many hundreds of individuals have elected to join this action.

2. The reasonableness of the charges is not in issue in this claim, only the right to make any charge at all. Plaintiffs have other actions pending—Ct.Cl. Nos. 772–71, 773–71, 774–71, and 775–71—raising the reasonableness and other issues.

3. Plaintiffs' claims, resulting from administrative charges assessed before March 15, 1965 (6 years before the filing of a petition in this case), would be barred by the statute of limitations, 28 U.S.C. § 2501, as to Indians who had access to this court. Capoeman v. United States, 440 F.2d 1002, 194 Ct.Cl. 664 (1971). Plaintiffs ask us to overrule that decision which was decided by a unanimous court. The decision in the present case makes it unnecessary to consider whether the alleged "noncompetence" of any of the plaintiff-allottees has worked to toll the statute of limitations. It will also be unnecessary to consider possible waiver by reason of powers of attorney given by plaintiffs to the forest manager authorizing the harvesting of their timber and assessment of the now contested administrative charges. The issue of interest is rendered moot by our holding as to the pending claims.

4. These tribes were the Quinault, the Quileute, the Chekalis, the Chinook, the Cowlitz, the Hoh, and the Quit.

The negotiations culminated in a treaty signed only by the Quinaults and Quileutes on July 1, 1855, and by Governor Stevens on January 25, 1856, 12 Stat. 971 [ratified March 8, 1859; proclaimed April 11, 1859]. Known as the Treaty of Olympia, parts thereof, which are pertinent here, are as follows:

> ARTICLE I. The said tribes and bands hereby cede, relinquish, and convey to the United States all their right, title, and interest in and to the lands and country occupied by them, * * *.
>
> ARTICLE II. There shall, however, be reserved, for the use and occupation of the tribes and bands aforesaid, a tract or tracts of land sufficient for their wants within the Territory of Washington, to be selected by the President of the United States, and hereafter surveyed or located and set apart for their exclusive use, * * *.
>
> * * * * * *
>
> ARTICLE VI: The President may hereafter, * * * at his discretion, cause the whole or any portion of the lands to be reserved, or of such other land as may be selected in lieu thereof, to be surveyed into lots, and assign the same to such individuals or families as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas [10 Stat. 1043], so far as the same may be applicable.

Article VI of the aforesaid Omaha Treaty provided the details of the method of allotment to single Indians and Indian families and for forfeiture of an allotment if an allottee neglected his land, refused to occupy it, or abandoned it and wandered from place to place. The President of the United States was authorized, in his discretion, to issue patents for assigned land, conditioned on the agreement that such land would not be aliened or leased for periods longer than 2 years. It was also provided that the land should be exempt from "levy, sale, or forfeiture" until such time as a state legislature should remove the restrictions with consent of Congress. 10 Stat. 1045 (1854). The restrictions have never been removed. The validity of this restraint upon alienation was upheld as to both land and standing timber in Starr v. Campbell, 208 U.S. 527, 28 S.Ct. 365, 52 L.Ed. 602 (1908).

In accordance with Article II of the Quinault (Olympia) Treaty *supra*, a 10,000-acre reservation was set aside for the Quinaults and other Washington Territory tribes in 1861. This tract proved unappealing, however, on account of its limited size and heavy concentration of timberland. The tract included only a small amount of land suitable for farming or grazing. As a result, the Quinault Agency superintendent suggested that since the coastal tribes of southwest Washington drew their sustenance almost entirely from the water, such tribes should be collected on a reservation suitable for their fishing needs. This recommendation led to an order, issued by President Grant on November 4, 1873, designating approximately 220,000 acres of the Washington coast as an Indian reservation.[5] The order provided that:

> In accordance with the provisions of the treaty with the Quinaielt [Quinault] and Quillehute [Quileute] Indians, concluded July 1, 1855, and January 25, 1856 * * *, and to provide for other Indians in that locality, it is hereby ordered that the following tract of country in Washington Territory * * * be withdrawn from sale and set apart for the use of the Quinaielt, Quillehute, Hoh, Quit, and other tribes of fish-eating Indians on the Pacific coast, * * *. [Executive Orders Relating to Indian Reser-

5. *Cf.* Halbert v. United States, 283 U.S. 753, 757, 51 S.Ct. 615, 75 L.Ed. 1389 (1931), rev'g, United States v. Halbert, 38 F.2d 795 (9th Cir. 1930), and aff'g District Court case (unreported).

vations from May 14, 1855 through July 1, 1912, G.P.O., p. 206 (1912).]

Not as many Indians as expected moved to the new reservation following the 1873 proclamation. Many tribes chose to stay on their older and smaller reservations or ancestral homelands. This reluctance to move to the new reservation was not shortsighted, however, since only 2 percent of the 220,000-acre reservation was suitable for cultivation or for homesites. The great expanse of the 220,000-acre tract was, and still is, rain forest covered with huge, coniferous trees, some several hundred years old. Settlement on the tract was impossible except in random clearings where those Indians moving to the tract formed small villages.

On February 8, 1887, Congress passed the General Allotment Act, ch. 119, 24 Stat. 388 (1887). *Cf.* 25 U.S.C. § 331, note on Prior Law. One of the purposes of this Act was to provide Indians with the economic ability to integrate into society. This Act provided for the allotment of land in severalty to Indians on various reservations, including the Quinault Reservation. The Act authorized the President of the United States to grant such allotments whenever, in his opinion, reservation land was found to be suitable for agricultural or grazing purposes. The Secretary of the Interior was directed to issue patents declaring that the United States held the allotted lands in trust for 25 years for the sole use and benefit of the individual Indian allottees. At the end of this 25-year trust period, the United States was to convey the land to the Indian allottee or his heirs "in fee, discharged of said trust and free of all charge or incumbrance whatsoever." Ch. 119, § 5, 24 Stat. 389 (1887), 25 U.S.C. § 348. It is upon this statutory language that plaintiffs base their claim. It is their assertion that such language precludes any charges being levied against the trust, even while it is still in existence. Congress enacted legislation in 1906 [6] and again in 1934 [7] extending such trust period indefinitely.

The allotments made under the General Allotment Act were not to exceed 80 acres of agricultural land or 160 acres of grazing land. No reference was made in the Act to forest or timberland. The allotment process began in 1905 and continued without difficulty until 1911. By that time, over 750 allotments had been made, more than half of which were granted to Indians who were not members of the Quinault or Quileute tribes. For this reason, in 1911, Congress enacted legislation making clear the President's right to grant allotments to Indians not of the Quinault or Quileute tribes. This legislation directed the Secretary of the Interior to grant allotments on the Quinault Reservation—

> * * * to all members of the Hoh, Quileute, Ozette or other tribes of Indians in Washington who are affiliated with the Quinaielt and Quileute tribes in the treaty of July first, eighteen hundred and fifty-five, and January twenty-third, eighteen hundred and fifty-six, and who may elect to take allotments on the Quinaielt Reservation rather than on the reservations set aside for these tribes: *Provided*, That the allotments authorized herein shall be made from the surplus lands on the Quinaielt Reservation after the allotments to the Indians thereon have been completed. [Ch. 246, 36 Stat. 1346 (1911).]

6. Ch. 3504, 34 Stat. 326 (1906):
"That prior to the expiration of the trust period of any Indian allottee to whom a trust or other patent containing restrictions upon alienation has been or shall be issued under any law or treaty the President may in his discretion continue such restrictions on alienation for such period as he may deem best: *Provided, however*, That this shall not apply to lands in the Indian Territory."

7. Indian Reorganization Act of 1934, ch. 576, § 2, 48 Stat. 984 (1934) [25 U.S.C. § 462]:
"The existing periods of trust placed upon any Indian lands and any restriction on alienation thereof are hereby extended and continued until otherwise directed by Congress."

The allotment process came to a temporary halt in 1912 when the Secretary of the Interior determined that the reservation land was more valuable for its timber than for agricultural or grazing purposes.[8] The allotment process did not resume until 1924, after the Supreme Court in United States v. Payne, 264 U.S. 446, 44 S.Ct. 352, 68 L.Ed. 782 (1924), settled the question of whether the Allotment Act, in referring only to grazing and agricultural land, meant to preclude allotment of timberland. The Court ruled that it did not.

The papers before the court indicate that some 2,340 trust allotments on the Quinault Reservation were issued to individual Indians. Some of the alloted land is not now in Indian ownership but the lands of about 2,000 Indians are still in trust status. Plaintiffs are from among this group. This then is the historical and factual context within which Congress enacted the legislation which bears directly on the question presented in this case.

In 1910, Congress authorized the commercial sale of standing timber on allotted Indian lands:

> * * * the timber on any Indian allotment held under a trust or other patent containing restrictions on alienations, may be sold by the allottee with the consent of the Secretary of the Interior and the proceeds thereof shall be paid to the allottee or disposed of for his benefit under regulations to be prescribed by the Secretary of the Interior. [Ch. 431, § 8, 36 Stat. 857 (1910).]

Before the passage of this statute, no authority existed permitting the Quinault allottees to sell their timber.

Logging operations began on the Quinault Reservation in 1922.[9] Prior to that date, in 1920, Congress enacted legislation authorizing the Secretary of the Interior to charge "reasonable fees" for services rendered to Indian tribes or individual Indians:

> * * * the Secretary of the Interior * * * is * * * authorized and directed, under such regulations as he may prescribe, to charge a reasonable fee for the work incident to the sale, leasing, or assigning of such lands, or in the sale of the timber, or in the administration of Indian forests, to be paid by vendees, lessees, or assignees, or from the proceeds of sales, the amounts collected to be covered into the Treasury as miscellaneous receipts. [Ch. 75, § 1, 41 Stat. 415 (1920).]

From 1920 until the present, the United States has had the authority to levy administrative charges against the proceeds of timber sales on the Quinault Reservation. The General Timber Sale Regulations of April 10, 1920, issued by the Forestry Branch of the Indian Service, Department of the Interior, provided, *inter alia:*

> * * * for the setting aside of not more than 10% of the proceeds of [the timber] sale[s] to cover the expense of advertising, marking, scaling, protection of timber, and supervision of the sale. * * *. [United States v. Eastman, 118 F.2d 421, 423 (9th Cir. 1941),[10] rev'g on other grounds, 28 F.Supp. 807 (W.D.Wash.1939).]

8. In Mitchell v. United States, 22 F.2d 771 (9th Cir. 1927), an Indian affairs agent, charged with dispersing allotments on the Quinault Reservation, testified that allotments had been discontinued in 1912 because the lands were more valuable for timber than for agricultural purposes.

9. Eastman v. United States, 28 F.Supp. 807 (W.D.Wash.1939), rev'd on other grounds, 118 F.2d 421 (9th Cir. 1941).

10. The General Forest Regulations of April 23, 1936, called for an 8-percent deduction from the "gross amount received for the timber sold under regular supervision from allotted or from unallotted land." This amount was to cover the cost of "examining, supervising, advertising, collecting, disbursing, accounting, marketing, scaling, caring for the slash, and protecting from fire the timber and young growth left standing on the land being logged or upon adjacent land." 25 C.F.R. § 61.25 (1939). When there was no administration by the Indian Service subsequent to a sale, a deduction of 3 percent of the sale price was to be taken "to

These statutes, and the regulations issued thereunder, remained substantially unchanged until 1964 when Congress revised the 1910 Act. The amended provision incorporated a reference to the 1920 Act (25 U.S.C. § 413) and provided that—

> The timber on any Indian land held under a trust or other patent containing restrictions on alienations may be sold by the owner or owners with the consent of the Secretary of the Interior, and the proceeds from such sales, *after deductions for administrative expenses to the extent permissible under section 413 of this title,* shall be paid to the owner or owners or disposed of for their benefit under regulations to be prescribed by the Secretary of the Interior. * * *. [New language italicized. Sec. 8(a), 78 Stat. 187 (1964); 25 U.S.C. § 406(a).]

and that—

> * * * It is the intention of Congress that a deduction for administrative expenses may be made in any case *unless the deduction would violate a treaty obligation or amount to a taking of private property* for public use without just compensation in violation of the fifth amendment to the Constitution. * * *. [Emphasis supplied. Sec. 8(a), 78 Stat. 187 (1964); 25 U.S.C. § 406(a).]

[1] Plaintiffs claim that the Government has breached its promises to them made in the General Allotment Act, by which it promised no charge or encumbrance on their future fee, by many years later creating an administrative charge for handling some aspects of the Indian trust. It is obvious that when Congress wrote the language of the General Allotment Act, it did not have in mind at all the possibility of the administrative charge which came 33 years later. In 1887 Congress was speaking only in conventional terms of an encumbrance on the fee, such as would be represented by a lien or a mortgage. The Government has never violated that commitment. In 1887, when the General Allotment Act became law, there was no statutory authority for sale of the timber. This arose much later in 1910, and was followed by other statutory authority for the administrative charges in 1920. When the 1887 Act was passed, the United States had not at that point undertaken the obligation of timber management and sale for the benefit of the Indians, so it cannot be said that at that point they were entering into a contract to manage a property free of charge, as plaintiffs claim. If the United States assumed any such special duty to the Indians in this connection it would be in the Treaty of 1855 but plaintiffs admit that it is not there. No subsequent act of Congress changed the treaty, broke any contract, or took any private property of plaintiffs.

[2] Plaintiffs misinterpret the language of the General Allotment Act. That Act only provides that, when the trust in favor of the Indian allottees is terminated and the land is transferred to such allottees in fee, such property will be transferred to the allottees free of any debts, liens or similar encumbrances. The purpose of the General Allotment Act of 1887, as already stated, was to lay a foundation for integrating Indians into the mainstream of American society. As such, the Act sought to establish Indians financially so that the reservations could be dissolved and the Indians living thereon could be integrated into modern society. The Allotment Act was a means of staking such Indians so that they would have the wherewithal to survive economically once the umbilical cords tying them to reservations were severed. It was entirely consistent with this purpose that Congress sought to insure that the Indians would

cover the cost of estimating the timber and effecting the sale." 25 C.F.R. § 61.25 (1973). The amount of the [illegible] for administrative [illegible] was changed [illegible] and 5 percent, respectively, in 1944, and has remained at that level to the present. 25 C.F.R. § 61.25 (1944); 25 C.F.R. § 141.18 (1973).

eventually receive their fee to allotted lands with no strings attached.

[3] Nothing in the 1887 Act, however, prohibits reasonable administrative charges against the proceeds from such allotted lands while held in trust and administered by the United States. This is consistent with the law of trusts which does not require that a trustee gratuitously contribute his services, absent an express agreement to the contrary.

> A trustee can properly incur expenses which are necessary or appropriate for the carrying out of the purposes of the trust. (Footnote omitted.) When such expenses are properly incurred, they should ultimately be borne by the trust estate rather than by the trustee personally. [III Scott, Trusts § 244 (3d ed. 1967); *see generally* Trustees v. Greenough, 105 U.S. 527, 532, 26 L.Ed. 1157 (1881).]

There is no indication in the legislative history to the 1964 statutory amendments that Congress was much concerned about its authority to levy such administrative charges against the timber proceeds under 25 U.S.C. § 413.[11] The legislative history shows that the major purpose of the 1964 amendment to 25 U.S.C. § 406(a) was to provide the statutory basis for modernizing timbering operations on Indian reservations. Under the 1910 Act, the Interior Department was not authorized to meet the 1964 "standards of timber harvesting in accordance with principles of sustained yield, or to permit the removal of immature trees of poor quality or undesirable species." H.R.Rep.No.1292, 88th Cong., 2d Sess. (1963), 1 U.S.Cong. & Admin.News p. 2162 (1964); S.Rep.No. 672, 88th Cong.2d Sess. (Nov. 27, 1963). Ancillary to this major purpose was the incorporation by reference of the provisions of the 1920 Act concerning administrative charges (now 25 U.S.C. § 413) into the amended 1910 Act. This change was described by Assistant Secretary of the Interior, John A. Carver, Jr., as a "technical amendment" not changing the present law. 1 U.S.Cong. & Admin.News p. 2164 (1964). Plaintiffs' attempt to attribute to Congress a Machiavellian motive to circumvent the no "charge or incumbrance" language of the General Allotment Act by the 1964 amendment to section 406(a) lacks a substantial basis in fact.

Additionally, the late John W. Cragun, before his decease a member of the distinguished law firm representing plaintiffs in this action, testified before Congress that the incorporation of language authorizing an administrative charge of 10 percent against the timber proceeds would be in violation of the trust established by the 1887 Allotment Act. Congress, however, rejected the arguments propounded by Mr. Cragun and amended section 406(a), as heretofore shown. Since Congress, before it enacted the 1964 amendments, had opportunity to consider the same arguments as are now being made to this court, it would seem presumptuous for us to make an interpretation of the legislative history at variance with what Congress so plainly did. As plaintiffs suggest, Congress anticipated this suit, after the Cragun testimony, when it wrote into the law that the charges should not "violate a treaty obligation or amount to a taking of private property for public use, without just compensation." Sec. 8(a), 78 Stat. 187 (1964); 25 U.S.C. § 406(a). This language made no substantive change in the prior law as to administrative charges. Those charges are now alleged to be in conflict with the General Allotment Act of 1887. But, the subsequent enactments which authorized and reaffirmed them through 1964 were specific

11. 25 U.S.C. § 413; ch. 75, § 1, 41 Stat. 415 (1920), amended, ch. 158, 47 Stat. 1417 (1933):

> "The Secretary of the Interior is authorized, in his discretion, and under such rules and regulations as he may prescribe, to collect reasonable fees to cover the cost of any and all work performed for Indian tribes or for individual Indians, to be paid by vendees, lessees, or assignees, or deducted from the proceeds of sale, leases, or other sources of revenue: * * *."

and dispose of any arguments about congressional intent or authority in the matter arising from the 1887 Act. The 1964 Act raised two caveats about the charges, in apparent deference to Mr. Cragun. First, it cautioned that the charges should not violate any treaty. United States v. Eastman, *supra*, has settled that by saying that the charges do not violate the 1855 Treaty. Second, it was said that there must be no taking of private property for public use, as prohibited by the Fifth Amendment. The questioned charges are not a taking of plaintiffs' property for public use. Congress permitted reasonable charges, as first outlined in the 1920 Act, for the advertising, marking, scaling, protection of timber, and supervision of the sale thereof, which were all designed for plaintiffs' use and benefit. There is no showing in this case of a breach of fiduciary duty whereby the United States as trustee made more than a reasonable charge for the services from which plaintiffs have so greatly benefited.

[4] We hold that the two sins flagged by the 1964 amendments have not been committed. Indians not fully emancipated from the control and protection of the United States are subject to its legislation. Long ago the Supreme Court affirmed this authority of Congress to exercise the plenary power of the United States over Indians. It said that such a power "has always been deemed a political one, not subject to be controlled by the judicial department of the government." Lone Wolf v. Hitchcock, 187 U.S. 553, 565, 23 S.Ct. 216, 221, 47 L.Ed. 299 (1903).

[5, 6] It follows, therefore, that Congress had the power to authorize the charges now in issue just as it had the power, earlier, to provide in the General Allotment Act that when the fee to the allotted land is passed to the allottees it should be without a cloud on it. The Indians say that they have received patent deeds, free and clear, signed by the President.[12] But, the deeds recite the language of the General Allotment Act that the land is held in trust and that when the trust terminates the fee will then pass without charge or encumbrance against it. It is from the operation of the trust that the charges here have arisen. The charges do not run against the titles or cloud them in any way as an unpaid tax would. The charges are deducted when the timber is sold and do not encumber the fee or constitute a possible lien on it.

In United States v. Eastman, 118 F.2d 421 (9th Cir. 1941), rev'g on other grounds, 28 F.Supp. 807 (W.D.Wash. 1939), six individual Quinault allottees brought suit to contest the validity and application of some of the very authority involved in the present case. They said that the deduction of the administrative charges violated the 1855 Treaty. The Ninth Circuit rejected that contention and ruled that the treaty did not immunize the timber proceeds from charges authorized by the 1920 statute and regulations promulgated thereunder. The court said that it found "nothing in the [1855] treaty which could be thought to limit the power of Congress" to make such assessments. United States v. Eastman, 118 F.2d at 425. The court noted that the trust patents of plaintiffs were issued in conformity with the General Allotment Act of February 8, 1887, and contained the usual references thereto. However, the impact, if any, of the General Allotment Act on the administrative charges was not presented to the court. For the reasons shown herein, we do not think it makes any difference, or would have

12. In another case involving a Quinault Indian allottee, the Supreme Court said in a footnote: "The term 'patent' inadequately describes respondent's interest. 'Congress * * * was careful to avoid investing the allottee with the title in the first instance, and directed that there should be issued to him what * * * is in reality an allotment certificate * * *.' Monson v. Simonson, 231 U.S. 341, 345, 34 S.Ct. 71, 72, 58 L.Ed. 260" [Squire v. Capoeman, 351 U.S. 1, 4, 76 S.Ct. 611, 613, 100 L.Ed. 883 (1956).]

made any difference, in *Eastman*. Plaintiffs concede that nothing in that Act *or* in the treaty prohibits the charges. They place their sole reliance upon certain court decisions which they say compel a result in their favor and urge that we disagree with the decision in *Eastman*, a challenge which we respectfully decline.

Plaintiffs' argument that there is no tenable difference between Choate v. Trapp, 224 U.S. 665, 32 S.Ct. 565, 56 L. Ed. 941 (1912), and this case, is also misplaced. In that case the Choctaw and Chickasaw tribes, in Oklahoma, negotiated agreements with the United States to give up their communal lands in consideration of land patents to be allotted to the 8,000 individual tribal members who would thereupon surrender any rights they had to the property formerly held in common. These agreements were incorporated into the Curtis Act of 1898, ch. 517, 30 Stat. 507, which specified that the land allotment was to be nontaxable while owned by the original allottee, but not to exceed 21 years from the date of the patent. Also, one-half of each allotment was inalienable for 21 years. This vested right of nontaxability was written into the Constitution of the State of Oklahoma. Congress, thereafter, in 1908, passed a general act removing restrictions and tax exemptions from land held by Indians of the class to which these Indians belonged. Oklahoma, thereupon, attempted to tax the allotments. The Supreme Court held that removal of restrictions on alienation of Indian allotments falls within the power of Congress to regulate Indian affairs, citing Lone Wolf v. Hitchcock, *supra*, but that the specific provision for nontaxation was a vested property right protected by the Fifth Amendment, was binding on both the Nation and the State, and was not subject to impairment or abrogation by either. In contrast, while tax exemption was promised in *Choate*, arising from valid agreement, no equivalent agreement of freedom from administrative charges was made in the instant case. United States v. Eastman, *supra*.

Plaintiffs also place great reliance upon Squire v. Capoeman, 351 U.S. 1, 76 S.Ct. 611, 100 L.Ed. 883 (1956). That case was brought by a Quinault allottee to recover capital gains taxes paid on the proceeds of timber sold from his allotment. Capoeman made the same argument that he and other plaintiffs now make here.[13] He said that the taxes collected were in violation of the provisions of the Treaty of 1855, the trust patent, and the General Allotment Act. The Supreme Court held that collection of the tax was indeed inconsistent with the Government's promise in the General Allotment Act to transfer the fee "free of all charge or incumbrance whatsoever." The Court said that although this statutory provision is not expressly couched in terms of nontaxability, since doubtful expressions are to be resolved always in favor of the Indians who are wards of the Nation, the general words "charge or incumbrance" might well be sufficient to include taxation. But, the Court did not base its holding on that supposition. It has said repeatedly that in ordinary affairs of life not governed by treaties or remedial legislation "[e]xemptions from taxation do not rest upon implication (footnote omitted)." United States Trust Co. v. Helvering, 307 U.S. 57, 60, 59 S.Ct. 692, 693, 83 L. Ed. 1104 (1939); *see* Oklahoma Tax Comm'n v. United States, 319 U.S. 598, 63 S.Ct. 1284, 87 L.Ed. 1612 (1943). This doctrine was recently cited with approval in United States v. Mason, 412 U.S. 391, 93 S.Ct. 2202, 37 L.Ed.2d 22 (1973). The *Capoeman* Court pointed out that section 6 of the Act had been amended to include a proviso giving the Secretary of the Interior authority to determine an Indian allottee to be competent and, in such event, to issue to him a patent in fee simple "* * * and

13. In Capoeman v. United States, 440 F.2d 1002, 194 Ct.Cl. 664 (1971), plaintiff's challenge to collection of the administrative charges was rejected by the court on the grounds of the statute of limitations, as to which plaintiff was not "noncompetent."

thereafter all restrictions as to sale, incumbrance, or *taxation* of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent * * * (emphasis supplied)." 351 U.S. at 7, 76 S.Ct. at 615. From this language the Court reasoned that Congress implicitly meant there should be no taxation of an incompetent Indian who had not received his patent in fee simple.

The justice and logic of that holding is plainly sound. "'[I]t is not lightly to be assumed that Congress intended to tax the ward for the benefit of the guardian.'" Squire v. Capoeman, 351 U.S. at 8, 76 S.Ct. at 616. The trustee's duty is to preserve the trust and income therefrom to further the goal of qualifying the Indian to take his place in modern society. The Court said: "This chance is guaranteed by the tax exemption afforded by the General Allotment Act, and the solemn undertaking in the patent." 351 U.S. at 10, 76 S.Ct. at 617.

[7] The question now is whether the administrative charges can fairly be equated to taxes under the foregoing rationale. We think not. No language in the 1855 Treaty, the Allotment Act, or any subsequent trust agreement dealt with such a charge in the same clear manner as the proviso to section 6 of said Act (now 25 U.S.C. § 349) treats imposition of taxes. While a capital gains tax is paid on, and for, realized accessions to wealth, the administrative charges in the present case have been authorized in return for many services (see the 1920 Act, *supra*) rendered in plaintiffs' favor by the Government to preserve and increase plaintiffs' wealth. If it did not make sense to tax the ward for the benefit of the guardian, by the same token it makes little sense to charge the trustee for services to the ward which would violate the trust if not performed.

Plaintiffs' contention that *Eastman* must be reconsidered in light of *Capoeman* must fail. In *Capoeman*, the Supreme Court cited *Eastman* for the proposition that "[t]he Government determines the conditions under which the cutting is made." 351 U.S. at 10, 76 S.Ct. at 617. It was plainly aware of the holding in that case and cast no shadows over its viability, although, of course, administrative charges for timber handling were not directly involved in *Capoeman*. In the present case, the United States, in valid exercise of its plenary power, enacted legislation providing for the assessment of reasonable administrative charges against the Quinault allottees for services rendered to them in the preservation and sale of their timber. This practice has a standing now of 53 years with the Quinaults and has received continuous congressional approval. There is no ambiguity here to be resolved by the rule of giving the Indian benefit of all doubt.[14]

[8] The practice of deducting reasonable charges to help cover the costs of selling tribal lands, buildings, collection of rents and royalties, administering Indian moneys, appraising timber, and certain other activities for benefit of Indians, has long been recognized as appropriate by this court in certain circumstances. In the court's extensive analysis of such matters in Choctaw Nation v. United States, 91 Ct.Cl. 320 (1940), cert. denied, 312 U.S. 695, 61 S.Ct. 730, 85 L.Ed. 1130 (1941), the court reaffirmed that "the rule as to construction of treaties with the Indians most favorable to the Indians does not extend to the point of permitting the court to indulge in presumptions and implications of assumed obligations by the government where the attendant facts and

14. "The rule that words in treaties with, and statutes affecting, Indians, must be interpreted as the Indians understood them is not applicable where the statute is not in the nature of a contract and does not require the consent of the Indians to make it effectual." United States v. First Nat'l Bank, 234 U.S. 245, 34 S.Ct. 846, 58 L.Ed. 1298 (1914), and quoted with approval in Capoeman v. United States, 440 F.2d at 1008, 194 Ct.Cl. at 677.

circumstances clearly negative any intention upon the part of the government to assume such obligations." 91 Ct.Cl. at 370. While that case involved a tribe, and the instant case involves claims by individual Indian allottees, there is no apparent reason to distinguish the propriety of such practices as here questioned, since we conclude that the General Allotment Act on which plaintiffs base their claims gives them no rights that the tribes do not have as to these particular administrative charges. To hold otherwise would also unjustly enrich plaintiffs at the expense of the Government which is not claimed in this case to have derived benefit or profit from these sales of timber. Plaintiffs, as previously noted, concede that neither the Quinault Treaty nor the General Allotment Act prohibits these charges. Fundamentally, their contention is that, since the Supreme Court has held in cases involving taxes that the amended General Allotment Act specifically prohibits taxation of Indian gain from timber sales, a charge for administering an Indian trust allotment, although specifically authorized by statute since 1920, must, by implication, also be prohibited. We believe that result does not follow in this case, for the reasons given. We do not, of course, pass on the propriety of other charges or of any taxes imposed with respect to this property.

In conclusion, the court finds that the United States had proper authority, under 25 U.S.C. § 406(a) and § 413, to assess reasonable administrative charges against the proceeds of timber sales on the Quinault Reservation from allotments owned by individual Indians, and administered in trust by the United States. The plaintiffs have shown no taking of their property for public purposes, no breach of contract, or no violation of fiduciary duty, treaty, statute or regulation. It follows that plaintiffs, therefore, have failed to state a claim for which relief may be granted.

The defendant's motion for summary judgment is granted. Plaintiffs' cross-motion for partial summary judgment is denied. The petition is dismissed.

D. C. ANDREWS INTERNATIONAL, INC., Appellant,

v.

The UNITED STATES, Appellee.

Customs Appeal No. 5520.

United States Court of Customs and Patent Appeals.

Oct. 25, 1973.

From an order and judgment of the United States Customs Court denying motion to vacate an order of dismissal of actions for lack of prosecution, for rehearing as to dismissal and for permission to file motion to consolidate appeals with different reappraisement appeal, an appeal was taken. The Customs Court held that the dismissal of the actions for lack of prosecution was proper and that the permission to file the motion to consolidate was properly denied.

Affirmed.

Customs Duties ⇐85(3)

Dismissal of actions for lack of prosecution was proper, and permission to file motion to consolidate appeals in such actions with different reappraisement appeal was properly denied.

Allerton deC. Tompkins, New York City, attorney of record, for appellant.

Irving Jaffe, Acting Asst. Atty. Gen., Andrew P. Vance, Chief, Customs Section, New York City, David B. Greenfield, Civil Division, Department of Justice, for the United States.

Before MARKEY, Chief Judge, and RICH, BALDWIN, LANE and MILLER, Judges.

PER CURIAM.

This appeal is from the order and judgment of the United States Customs Court, D. C. Andrews International, Inc. v. United States, Reappraisement Nos. R67/18607, etc., entered July 21, 1972, denying appellant's motion for vacation of an order entered May 26, 1972, dis-